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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, July 9, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Presidential Documents

Title 3—

The President

Memorandum of June 3, 2013

Delegation of Certain Functions and Authorities Under the Iran Freedom and Counter-Proliferation Act of 2012

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Attorney General[,] the Secretary of Energy[,] the Secretary of Commerce[,] the Secretary of Homeland Security[, the] United States Trade Representative[,] the Director of National Intelligence[, the] Chairman of the Board of Governors of the Federal Reserve System[, and the] President of the Export-Import Bank

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

I hereby delegate functions and authorities vested in the President by the Iran Freedom and Counter-Proliferation Act of 2012 (subtitle D of title XII of Public Law 112–239) (22 U.S.C. 8801 *et seq.*) (IFCA), as follows:

- Section 1244(c)(1) and (c)(2) to the Secretary of the Treasury, in consultation with the Secretary of State;

- Section 1244(d)(1)(A) to the Secretary of State, in consultation with the Secretaries of the Treasury and Commerce and the United States Trade Representative, and with the Secretary of Homeland Security, the President of the Export-Import Bank of the United States, and the Chairman of the Board of Governors of the Federal Reserve System and other agencies as appropriate, and, once applicable sanctions outlined in section 6(a) of the Iran Sanctions Act of 1996 (Public Law 104–172) (50 U.S.C. 1701 note), as amended (ISA), are selected pursuant to section 1244(d)(1)(A), authority to implement such sanctions is delegated to the relevant agency heads commensurate with any delegation of such authorities and consistent with any relevant Executive Orders implementing ISA;

- Section 1244(d)(2) to the Secretary of the Treasury, in consultation with the Secretary of State;

- Section 1244(f) to the Secretary of State, in consultation with the Secretary of the Treasury;

- Section 1244(i) to the Secretary of State, in consultation with the Secretary of the Treasury;

- Section 1245(a)(1)(A) to the Secretary of the Treasury, in consultation with the Secretaries of State and Commerce and the United States Trade Representative, and with the Secretary of Homeland Security, the President of the Export-Import Bank of the United States, and the Chairman of the Board of Governors of the Federal Reserve System and other agencies as appropriate, and, once applicable sanctions outlined in section 6(a) of ISA are selected pursuant to section 1245(a)(1)(A), authority to implement such sanctions is delegated to the relevant agency heads commensurate with any delegation of such authorities and consistent with any relevant Executive Orders implementing ISA;

- Sections 1245(a)(1)(B) and (C) to the Secretary of State, in consultation with the Secretaries of the Treasury and Commerce and the United States Trade Representative, and with the Secretary of Homeland Security, the President of the Export-Import Bank of the United States, and the Chairman of the Board of Governors of the Federal Reserve System and other agencies

as appropriate, and, once applicable sanctions outlined in section 6(a) of ISA are selected pursuant to section 1245(a)(1)(B) or (C), authority to implement such sanctions is delegated to the relevant agency heads commensurate with any delegation of such authorities and consistent with any relevant Executive Orders implementing ISA;

- Section 1245(c) to the Secretary of the Treasury, in consultation with the Secretary of State;

- Section 1245(e) to the Secretary of State, in consultation with the Secretary of the Treasury;

- Section 1245(f) to the Secretary of State and the Secretary of the Treasury commensurate with their respective areas of responsibility, in consultation with each other;

- Section 1245(g) to the Secretary of State, in consultation with the Secretary of the Treasury;

- Section 1246(a)(1)(A) to the Secretary of State and the Secretary of the Treasury commensurate with their respective areas of responsibility, in consultation with each other, the Secretary of Commerce and the United States Trade Representative, and with the Secretary of Homeland Security, the President of the Export-Import Bank of the United States, and the Chairman of the Board of Governors of the Federal Reserve System and other agencies as appropriate, and, once applicable sanctions outlined in section 6(a) of ISA are selected pursuant to section 1246(a)(1)(A), authority to implement such sanctions is delegated to the relevant agency heads commensurate with any delegation of such authorities and consistent with any relevant Executive Orders implementing ISA;

- Sections 1246(a)(1)(B)(i) and (ii) to the Secretary of State, in consultation with the Secretaries of the Treasury and Commerce and the United States Trade Representative, and with the Secretary of Homeland Security, the President of the Export-Import Bank of the United States, and the Chairman of the Board of Governors of the Federal Reserve System and other agencies as appropriate, and, once applicable sanctions outlined in section 6(a) of ISA are selected pursuant to section 1246(a)(1)(B)(i) or (ii), authority to implement such sanctions is delegated to the relevant agency heads commensurate with any delegation of such authorities and consistent with any relevant Executive Orders implementing ISA;

- Section 1246(a)(1)(B)(iii) to the Secretary of State and the Secretary of the Treasury commensurate with their respective areas of responsibility, in consultation with each other, the Secretary of Commerce and the United States Trade Representative, and with the Secretary of Homeland Security, the President of the Export-Import Bank of the United States, and the Chairman of the Board of Governors of the Federal Reserve System and other agencies as appropriate, and, once applicable sanctions outlined in section 6(a) of ISA are selected pursuant to section 1246(a)(1)(B)(iii), authority to implement such sanctions is delegated to the relevant agency heads commensurate with any delegation of such authorities and consistent with any relevant Executive Orders implementing ISA;

- Section 1246(a)(1)(C) to the Secretary of the Treasury, in consultation with the Secretaries of State and Commerce and the United States Trade Representative, and with the Secretary of Homeland Security, the President of the Export-Import Bank of the United States, and the Chairman of the Board of Governors of the Federal Reserve System and other agencies as appropriate, and, once applicable sanctions outlined in section 6(a) of ISA are selected pursuant to section 1246(a)(1)(C), authority to implement such sanctions is delegated to the relevant agency heads commensurate with any delegation of such authorities and consistent with any relevant Executive Orders implementing ISA;

- Section 1246(d) to the Secretary of State and the Secretary of the Treasury commensurate with their respective areas of responsibility, in consultation with each other;

• Section 1246(e) to the Secretary of State, in consultation with the Secretary of the Treasury;

• Section 1247(a) to the Secretary of the Treasury, in consultation with the Secretary of State;

• Section 1247(f) to the Secretary of State, in consultation with the Secretary of the Treasury;

• Section 1248(b)(1) to the Secretary of the Treasury, in consultation with the Secretary of State, with respect to the requirement to impose applicable sanctions pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA) described in section 105(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111–195) (22 U.S.C. 8501 *et seq.*) (CISADA), and with respect to the requirement to include the sanctioned persons on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury;

• Section 1248(b)(1) to the Secretary of State, with respect to the requirement to impose visa sanctions described in section 105(c) of CISADA;

• Section 1248(b)(3) to the Secretary of the Treasury, in consultation with the Secretary of State, with respect to application of section 401(b) of CISADA to IEEPA sanctions imposed under section 1248(b)(1)(A) of IFCA;

• Section 1248(b)(3) to the Secretary of State, in consultation with the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security, with respect to application of section 401(b) of CISADA to visa sanctions imposed under section 1248(b)(1)(A) of IFCA;

• Section 1252(a) to the Director of National Intelligence, in consultation with the Secretaries of State and the Treasury;

• Section 1253(a) to the Secretary of the Treasury and the Secretary of State, commensurate with their respective areas of responsibility outlined in this memorandum;

• Section 1253(c)(1) to the Secretary of State, in consultation with the Secretaries of the Treasury and Commerce and the United States Trade Representative, and with the Secretary of Homeland Security, the President of the Export-Import Bank of the United States, and the Chairman of the Board of Governors of the Federal Reserve System and other agencies as appropriate;

• Section 1253(c)(2) to the Secretary of State and the Secretary of the Treasury commensurate with their respective areas of responsibility, in consultation with each other, the Secretary of Commerce, and the United States Trade Representative, and with the Secretary of Homeland Security, the President of the Export-Import Bank of the United States, and the Chairman of the Board of Governors of the Federal Reserve System and other agencies as appropriate, and, once applicable sanctions outlined in section 6(a) of ISA are selected pursuant to section 1244(d)(1)(A), 1245(a)(1), or 1246(a)(1) (including in each case as informed by section 1253(c)(2)), authority to implement such sanctions is delegated to the relevant agency heads commensurate with any delegation of such authorities and consistent with any relevant Executive Orders implementing ISA.

I hereby delegate functions and authorities vested in the President by CISADA, as amended by section 1249 of IFCA, as follows:

• Section 105C(b) to the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, with respect to the determinations described in sections 105C(b)(1);

• Section 105C(b) to the Secretary of State, in consultation with the Secretary of the Treasury, with respect to the requirement to submit any lists of persons determined to meet the criteria described in sections 105C(b)(1), to the appropriate congressional committees as required by sections 105C(b);

- Section 401(b) to the Secretary of State, in consultation with the Secretary of the Treasury, with respect to the requirement to include a person on the list described in section 105C(b);

- Sections 105C(a)(1) and 401(b) to the Secretary of the Treasury, in consultation with the Secretary of State, with respect to the requirement to impose or maintain applicable sanctions pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA) under section 105C(a)(1);

- Section 105C(a)(1) to the Secretary of State, with respect to the requirement to impose or maintain visa sanctions; and

- Section 401(b) to the Secretary of State, in consultation with the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security, with respect to functions and waiver authorities regarding the requirement to impose or maintain visa sanctions under sections 105C(a)(1).

Any reference in this memorandum to provisions of any Act related to the subject of this memorandum shall be deemed to include references to any hereafter-enacted provisions of law that is the same or substantially the same as such provisions.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, June 3, 2013.

[FR Doc. 2013–14160
Filed 6–12–13; 8:45 am]
Billing code 4710–10

Rules and Regulations

Federal Register

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Thursday, June 13, 2013

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.

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DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 718 and 725

RIN 1240–AA07

Black Lung Benefits Act: Standards for Chest Radiographs

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: Physicians and adjudicators use chest radiographs (X-rays) as a tool in evaluating whether a coal miner suffers from pneumoconiosis (black lung disease). Accordingly, the Department's regulations implementing the Black Lung Benefits Act allow the submission of radiographs in connection with benefit claims and set out quality standards for their performance. These standards are currently limited to film radiographs. In recent years, many medical facilities have phased out film radiography in favor of digital radiography. This direct final rule updates the existing film-radiograph standards and provides parallel standards for digital radiographs. This rule also updates outdated terminology and removes certain obsolete provisions.

DATES: This direct final rule is effective September 11, 2013, without further action unless OWCP receives significant adverse comment to this rule by midnight Eastern Standard Time on August 12, 2013. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 11, 2013. If OWCP receives significant adverse comment, it will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit written comments, identified by RIN number 1240–AA07, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments. To facilitate receipt and processing of comments, OWCP encourages interested parties to submit their comments electronically.
- *Fax:* (202) 693–1395 (this is not a toll-free number). Only comments of ten or fewer pages, including a Fax cover sheet and attachments, if any, will be accepted by Fax.
- *Regular Mail:* Division of Coal Mine Workers' Compensation Programs, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–3520, 200 Constitution Avenue NW., Washington, DC 20210. The Department's receipt of U.S. mail may be significantly delayed due to security procedures. You must take this into consideration when preparing to meet the deadline for submitting comments.
- *Hand Delivery/Courier:* Division of Coal Mine Workers' Compensation Programs, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–3520, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Breeskin, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW., Suite N–3464, Washington, DC 20210. Telephone: (202) 693–0824 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–800–877–8339 for further information.

SUPPLEMENTARY INFORMATION:

I. Direct Final Rulemaking and Relationship With Companion Proposed Rule

In direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. The agency concurrently publishes an identical proposed rule. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

OWCP has determined that this rule, which primarily adopts quality standards for administering and interpreting digital radiographs, is suitable for direct final rulemaking. The standards adopted by this rule are largely based on those the Department of Health and Human Services recently promulgated for use in the National Institute for Occupational Safety and Health (NIOSH) Coal Workers' Health Surveillance Program (CWHSP) (the NIOSH rules). Those standards were subject to full notice-and-comment rulemaking. The NIOSH proposal informed the public that the standards might also be used by the Department of Labor in the Black Lung Benefits Act (BLBA) context, and OWCP alerted the BLBA employer and claimant communities to the NIOSH proposed rule. NIOSH addressed all significant comments when it promulgated its final rule. OWCP's direct final rule also does not impose any new requirements on the parties in BLBA claims; instead, it merely provides the parties another option for developing medical evidence in claim proceedings. Thus, OWCP does not expect to receive significant adverse comment on this rule. In addition, using a direct final rule will expedite the rulemaking process to give parties the option of using digital radiographs as soon as possible.

OWCP is also publishing a companion proposed rule in the ''Proposed Rules'' section of today's **Federal Register** to expedite notice-and-comment rulemaking in the event OWCP receives significant adverse comment and

withdraws this direct final rule. The proposed and direct final rules are substantively identical, and their respective comment periods run concurrently. OWCP will treat comments received on the companion proposed rule as comments regarding the direct final rule and vice versa. Thus, if OWCP receives a significant adverse comment on either this direct final rule or the companion proposed rule, OWCP will publish a **Federal Register** notice withdrawing this direct final rule and proceed with the companion proposed rule. If no significant adverse comment is received, this direct final rule will become effective September 11, 2013.

For purposes of this direct final rule, a significant adverse comment is one that explains: (1) Why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, OWCP will consider whether the comment raises an issue serious enough to warrant a substantive response if it had been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

OWCP requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community. All interested parties should comment at this time because OWCP will not initiate an additional comment period even if it withdraws the direct final rule.

II. Background of This Rulemaking

The BLBA, 30 U.S.C. 901–944, provides for the payment of benefits to coal miners and certain of their dependent survivors on account of total disability or death due to coal workers' pneumoconiosis. 30 U.S.C. 901(a); *Usery* v. *Turner Elkhorn Mining Co.,* 428 U.S. 1, 5 (1976). Benefits are paid by either an individual coal mine operator that employed the coal miner (or its insurance carrier), or the Black Lung Disability Trust Fund. *Director, OWCP* v. *Bivens,* 757 F.2d 781, 783 (6th Cir. 1985). The primary purpose of this rulemaking is to update the quality standards applicable to chest radiographs (X-rays) used in diagnosing the existence of pneumoconiosis by implementing new standards for digital radiographs. The Department has also updated certain terminology and removed an obsolete provision as explained in the section-by-section analysis below.

From the black lung program's inception, physicians and adjudicators have used chest X-rays as one tool in evaluating a miner's health. Recognizing their importance to claim adjudications, Congress has granted the Secretary of Labor explicit authority to, ''by regulation, establish specific requirements for the techniques used to take [chest X-rays]'' to ensure adequate and uniform X-ray quality. 30 U.S.C. 923(b). The BLBA also generally authorizes the Secretary of Labor, in consultation with NIOSH, to ''establish criteria for all appropriate medical tests'' administered in connection with benefit claims. 30 U.S.C. 902(f)(1)(D).

Based on these directives, the Department promulgated quality standards for administering and interpreting chest X-rays in 1980. *See* 45 FR 13678, 13680–81 (February 29, 1980). Codified at 20 CFR 718.102, 718.202, and Appendix A to Part 718, these standards were drawn largely from those adopted by NIOSH for what is now known as the Coal Workers' Health Surveillance Program (CWHSP). The CWHSP, mandated by the Coal Mine Health and Safety Act, was developed to detect coal workers' pneumoconiosis and prevent disease progression in individual miners, while at the same time providing information for evaluation of temporal and geographic trends in pneumoconiosis. 30 U.S.C. 843. To inform each miner of his or her health status, the CWHSP requires that underground coal mine operators offer new workers a chest X-ray through an approved facility as soon as possible after employment starts, another one three years later, and additional X-rays at periodic intervals thereafter. CWHSP chest X-rays must be administered and read in accordance with NIOSH's specifications. 30 U.S.C. 843(a). NIOSH set out these specifications—which included standards for administering, interpreting, classifying and submitting chest radiographs—for film-based radiography systems in regulations at 42 CFR part 37.

The Department modeled its 1980 BLBA chest X-ray quality standards on NIOSH's then-current regulations, which HHS had published on August 1, 1978. 43 FR 33713 (August 1, 1978). In consultation with NIOSH, the Department adopted (with minor revisions) those NIOSH rules that were relevant to ensuring that quality X-ray films would be submitted in BLBA claims. *See generally* 45 FR 13680–81 (February 29, 1980). Although NIOSH later revised two of the 42 CFR part 37 regulations the Department had adopted, 52 FR 7866–01 (March 13, 1987), the Department did not make similar changes to the BLBA quality standards. Nor did the Department revise the technical requirements (including those in Appendix A) when it amended other facets of § 718.102 and § 718.202 in 1983 and 2000. *See* 48 FR 24273–74 (May 31, 1983); 65 FR 79929, 79945–46 (December 20, 2000). Thus, the Department's current technical quality standards for chest X-rays have not been changed since 1980.

In the past decade, digital radiography systems have been rapidly replacing traditional analog film-based systems. Claimants, coal mine operators, and the Department have been experiencing increasing difficulty in obtaining film chest X-rays—the only type the BLBA quality standards address—for miners. Interpretations of digital X-rays are admissible as ''other medical evidence'' under the catch-all provision at 20 CFR 718.107, but only if the interpretation's proponent establishes to the adjudicator's satisfaction that digital X-rays are medically acceptable and relevant to the claimant's entitlement to benefits. *See generally Webber* v. *Peabody Coal Co.,* 23 BLR 1–123 (2006) (*en banc*); *Harris* v. *Old Ben Coal Co.,* 23 BLR 1–98 (2006) (*en banc*), *aff'd on recon.,* 24 BLR 1–13 (2007) (*en banc*). This has led to mixed results from adjudicators, with some admitting digitally based interpretations and others refusing to consider them or affording them less weight based on the technology employed.

Recognizing the overarching technological shift from film to digital radiography systems, NIOSH recently promulgated new standards for administering, interpreting, classifying and submitting digital chest radiographs for the CWHSP. 77 FR 56718–56735 (September 13, 2012) (final rule). *See also* 77 FR 1360–1385 (January 9, 2012) (proposed rule). NIOSH adopted these rules only after fully investigating the validity of using digital chest X-rays for diagnosing pneumoconiosis and full notice-and-comment proceedings that allowed the public to participate. The NIOSH rules also retained the standards for film-based radiography systems with minor terminology modifications.

This direct final rule retains the current regulatory quality standards for film-based chest X-rays (with the minor modifications explained in the section-by-section analysis below) and adds parallel quality standards for digitally acquired chest radiographs. As it did when it first promulgated quality standards for film-based chest X-rays,

the Department has derived its digital-radiography standards from those adopted by NIOSH for the CWHSP. The Department believes this is appropriate because Congress designated NIOSH as its statutory advisor for establishing standards for BLBA medical testing. These standards will ensure that claim adjudications continue to be based on high-quality, uniform radiographs. By adopting quality standards for digitally acquired chest X-rays, the Department intends that interpretations of film and digital X-rays—so long as they are made and interpreted in accordance with the applicable quality standards—will be put on equal footing both for admission into evidence and for the weight accorded them. The Department believes that claimants, coal mine operators, and the BLBA program itself will benefit in a variety of ways from these new rules. The additional benefits are outlined in more detail below.

III. Statutory Authority

Section 426(a) of the BLBA, 30 U.S.C. 936(a), authorizes the Secretary of Labor to prescribe all rules and regulations necessary for the administration and enforcement of the Act. The BLBA also authorizes the Secretary of Labor, in consultation with NIOSH, to ''establish criteria for all appropriate medical tests'' administered in connection with a benefits claim, 30 U.S.C. 902(f)(1)(D), and to ''establish specific requirements for the techniques used to take [X-rays] of the chest'' to ensure their quality. 30 U.S.C. 923(b).

IV. Section-by-Section Explanation

Updated Terminology

The Department has made two changes throughout the regulatory sections and Appendix that this rule revises. First, the Department has replaced the outdated term ''roentgenogram'' with the term ''radiograph,'' which is currently used in the medical community. *See, e.g.,* § 725.406(a).

Second, the Department has replaced the term ''shall.'' Executive Order 13563 states that regulations must be ''accessible, consistent, written in plain language, and easy to understand.'' 76 FR 3821 (January 21, 2011). *See also* E.O. 12866, 58 FR 51735 (October 4, 1993) (''Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.''). To that end, the Department has replaced the imprecise term ''shall'' in those sections and the Appendix it is amending with ''must'' for obligations imposed and ''must not'' for prohibitions. *See generally* Federal Plain Language Guidelines, *http://www.plainlanguage.gov/howto/guidelines;* Black's Law Dictionary 1499 (9th ed. 2009) (''shall'' can be read either as permissive or mandatory). These revisions required minor additional language changes in § 718.202(a)(2), (b), and (c). No change in meaning is intended.

20 CFR 718.5 Incorporations by Reference

This section is new. It was added to comply with the Office of the Federal Register's rules on incorporation by reference. The Director of the Federal Register has approved the Department's incorporation of the industry standards identified in § 718.102 and Appendix A. This section also explains how the public may obtain copies of the incorporated materials.

20 CFR 718.102 Chest Radiographs (X-Rays)

The Department has substantially revised § 718.102 to allow parties the option of submitting X-rays that are produced either by film or digital radiography systems, and to otherwise update the rule. Because these changes required reorganization of the regulation, the Department is publishing the new regulation in its entirety. Each revision is described below.

Subsection (a) has been retained and remains substantively unchanged.

Subsection (b) is new. It specifically allows for the submission of X-rays produced by either film or digital radiography systems as those systems are defined in Appendix A. Prior subsection (b) has been amended and re-designated subsection (d).

Subsection (c) is new. In accordance with the NIOSH standards, subsection (c) bans the use of X-rays that have been converted from film to digital, or vice-versa. NIOSH found that these approaches do not assure similar performance to that obtained from film under the existing standards. *See* 77 FR 1366 (January 9, 2012). Prior subsection (c) has been amended and re-designated subsection (e).

Subsection (d) establishes the standards for classifying both film and digital radiographs. The regulation continues to direct that classifications be made in accordance with the International Labour Organization's (ILO) classification system. For film X-rays, subsection (d)(1) lists the 1980, 2000, and 2011 editions of the ILO Guidelines. The Department has included these three editions to clarify that film X-rays acquired prior to the issuance of this regulation and interpreted under the earlier editions continue to meet the quality standards. Radiographs acquired and interpreted after implementation of this rule should be classified in accordance with the 2011 Guidelines. For digitally acquired X-rays, subsection (d)(2) requires classification using the ILO's 2011 Guidelines. The 2011 edition is the first one in which the ILO authorized the use of its classification system for digital images and developed a set of standard digital image files for use during classification. A party who wishes to introduce digital X-ray interpretations that pre-date issuance of the ILO 2011 Guidelines may still do so under the 20 CFR 718.107 ''other medical evidence'' standard. Subsection (d)(3) retains the provision that any X-ray classified as category 0 does not constitute evidence of clinical pneumoconiosis, whether acquired by film or digital systems. Finally, the Department has removed references to various classification systems published in 1958, 1968, and 1971 because they are obsolete.

Subsection (e) retains the current requirement that X-ray reports must include the name and qualifications of the medical provider who took the X-ray; the name and qualifications of the physician who interpreted it, including whether the physician is a Board-certified or Board-eligible radiologist or a Certified B Reader; the ILO classification; and a compliance statement. Definitions for Board-certified radiologist, Board-eligible radiologist, and Certified B Reader have been moved to subsection (e)(2) from their current location in 20 CFR 718.202(a)(1)(ii). The Department also updated the Certified B Reader definition by eliminating a reference to the Appalachian Laboratory for Occupational Safety and Health and adding a provision that the physician's certification must be maintained through the date he or she interprets the radiograph.

Subsection (f) is largely new. It describes the protocol for submitting film and digital X-rays to OWCP. The current film protocol, previously set forth under subsection (d), remains unchanged. The Department has added a protocol for submitting digital X-rays that requires parties to submit the data on DVD or other media OWCP specifies in a format that meets the standards set forth in Appendix A, paragraph (d). These standards preclude compression of the data unless the compression is lossless. *See* Appendix A, paragraph (d)(7)(v).

Subsection (g) allows an interpretation of a chest X-ray to be

submitted even in the absence of the underlying X-ray film or digital data file where the miner is deceased and the film or data upon which the report is based has been lost or destroyed. This provision, previously set forth in subsection (d), remains unchanged.

Subsection (h) provides a rebuttable presumption that the technical requirements found in Appendix A have been met. This provision, previously set forth in subsection (e), remains unchanged except that the cross-reference to 20 CFR 718.202 for the definitions of Board- certified radiologist, Board-eligible radiologist, and Certified B Reader has been removed.

20 CFR 718.202 Determining the Existence of Pneumoconiosis

In addition to moving the definitions for radiology qualifications to § 718.102 (*see* explanation at § 718.102), the Department has revised this regulation to eliminate outdated material. The Department has deleted subsections (a)(1)(i) and (ii), which implement the BLBA's X-ray rereading prohibition that applies only to claims filed before January 1, 1982. *See* 30 U.S.C. 923(b). Similarly, the Department has eliminated the phrase ''filed on or after January 1, 1982'' in the second sentence of subsection (c), which implements the BLBA's limitations on using lay evidence to prove pneumoconiosis, and reordered that provision for clarity. Few, if any, claims filed prior to January 1, 1982 remain in litigation. Thus, it is no longer necessary to publish the criteria governing these claims or to draw distinctions based on that date. If any claim filed before January 1, 1982 results in litigation after the effective date of these regulations, and the X-ray rereading prohibition or the lay testimony provision is at issue, the version of § 718.202(a)(1)(i), (a)(ii), and (c) as reflected in the 2011 edition of the Code of Federal Regulations will continue to apply.

20 CFR 718.304 Irrebuttable Presumption of Total Disability or Death Due to Pneumoconiosis

The Department has revised this rule to update the references to the ILO classification system. Prior subsections (a)(1), (2), and (3) set forth several outdated classification systems that could be used to diagnose complicated pneumoconiosis. The Department has eliminated these provisions and added a phrase to the end of subsection (a) that cross-references § 718.102(d): ''in accordance with the classification system established in Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses provided in § 718.102(d).'' As explained above, § 718.102(d) sets out the ILO classification systems that must be used when interpreting film and digital chest X-rays. This revision streamlines § 718.304 and makes it consistent with § 718.102(d).

Appendix A to Part 718—Standards for Administration and Interpretation of Chest Radiographs (X-Rays)

Appendix A retains the current standards for acquiring chest X-rays using film-screen technology (with minor modifications) and establishes the standards for acquiring and interpreting chest X-rays using digital radiography systems.

The Department has divided Appendix A into four primary sections: Paragraph (a) provides definitions applicable to either the film or digital chest X-ray standards, or both; paragraph (b) sets out general standards applicable to both film and digital X-rays; paragraph (c) retains the standards for film-based X-rays; and paragraph (d) establishes the new standards for acquiring and interpreting digital X-rays. The initial paragraph of the Appendix, which describes the background and purpose of the standards, remains unchanged.

Paragraph (a)'s definitions are adopted from the NIOSH rules and inform the remaining Appendix provisions.

Paragraph (b) includes general provisions that are applicable when obtaining both film and digital chest radiographs. Subparagraph (b)(1) is new and requires that facilities performing chest X-rays must continue to meet applicable local, State, and Federal licensing and certification requirements. In order to minimize the miner's risk from radiation exposure, (b)(1) also recommends that facilities conform to recognized industry standards regarding such exposure in the absence of other governing regulations. Subparagraph (b)(2) mirrors the NIOSH rules and requires that radiographs be performed by a qualified physician or radiologic technologist. *See* 42 CFR 37.40(c). This provision applies to both film and digital radiographs. Although the Department has not previously imposed this requirement on film-based X-rays, doing so should not pose any problems for the regulated community because it comports with standard industry practice and the term ''radiologic technologist'' is broadly defined at Appendix A, subparagraph (a)(4). Finally, subparagraphs (b)(3) and (4) retain general rules for performing X-rays that currently appear in paragraphs (2) and (10).

Paragraph (c) retains the existing standards for chest X-rays obtained by film with a few minor changes. For the sake of consistency with paragraph (d) of the Appendix, the Department has replaced the phrase ''1/20 of a second'' with 50 milliseconds, and the phrase ''1/10 of a second'' with ''100 milliseconds'' in former subparagraph (8)(i) (now located at subparagraph (c)(7)(i)). No change in meaning is intended. The Department has also amended the film speed requirements in former subparagraph (8)(iii) (now located at subparagraph (c)(7)(iii)) by adopting the NIOSH rule. *See* 42 CFR 37.41(i)(3). This change clarifies that the use of medium-speed film and intensifying screens is recommended but not required. Finally, the Department has deleted the term ''densitometric'' in former paragraph (12) (now located at subparagraph (c)(10)) because it is unnecessary.

Paragraph (d) is new and constitutes the bulk of the revisions to the Appendix. It sets out quality standards for acquiring chest radiographs using digital radiography systems as well as interpreting and transmitting them. As explained above, the Department adopted these provisions from the NIOSH rules. NIOSH fully explained these standards when it first proposed them and when it promulgated the final version. *See* 77 FR 56718–56735 (September 13, 2012) (final rule); 77 FR 1360–1385 (January 9, 2012) (proposed rule). In adopting the rule, NIOSH emphasized that the burden imposed by the standards would be low because they reflected standard industry practice and technology (*e.g.,* the DICOM standards). 77 FR 56724 (September 13, 2012); 77 FR 1372 (January 9, 2012). Moreover, many of the facilities that participate in the CWHSP will also be used to provide X-rays for BLBA claims because they are located in coal mining regions. These facilities already adhere to the NIOSH criteria and will not have to change their practices for the BLBA program. Thus, for the reasons stated by NIOSH, the Department believes that adopting these standards will ensure the quality of digital X-rays.

V. Administrative Law Considerations

A. Information Collection Requirements (Subject to the Paperwork Reduction Act)

This rulemaking imposes no new collections of information.

B. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has considered this rule with these principles in mind and has concluded that the regulated community will greatly benefit from this regulation.

This rule's greatest benefit is that it will increase the amount of access the Department and the parties to BLBA claims have to radiographic technology. From the Department's view, this rule will likely reduce delays in processing miners' benefits claims. The Department must offer each miner who files a claim an opportunity for a complete pulmonary evaluation. 30 U.S.C. 923(b); 20 CFR 718.101(a), 725.406. One component of that complete evaluation is a chest X-ray. 20 CFR 725.406(a). In recent years, many medical providers otherwise qualified to perform these evaluations have declined because they do not have film-based radiography systems available to them. This has led to a shortage of examining physicians. Because this rule now allows for routine acceptance of digital radiographs, the Department anticipates that it will be able to increase the number of providers available to conduct the initial complete pulmonary evaluation and reduce some delays in claim processing.

Claimants and coal mine operators (and their insurers) will similarly benefit. As the medical industry has transitioned from film to digital radiography systems over the past several years, the private parties have faced challenges in obtaining film-based X-rays. Miners have often had to travel long distances to obtain a film-based X-ray because the digital radiography services offered at a local clinic would not suffice. Not surprisingly, black lung claimants, coal-mine operators, and their representatives have repeatedly made informal requests for the Department to promulgate quality standards for digital X-rays.

This rule also relieves parties of a demanding evidentiary burden they faced when submitting interpretations based on digital X-rays. Until now, digital X-ray interpretations have been admissible in BLBA claim proceedings, but only if the interpretation's proponent established to the adjudicator's satisfaction that digital X-rays are medically acceptable and relevant to the claimant's entitlement to benefits. *See generally* 20 CFR 718.107; *Webber* v. *Peabody Coal Co.,* 23 BLR 1–123 (2006) (*en banc*); *Harris* v. *Old Ben Coal Co.,* 23 BLR 1–98 (2006) (*en banc*), *aff'd on recon.,* 24 BLR 1–13 (2007) (*en banc*). If the proponent failed to meet this burden, the adjudicator did not have to consider the evidence. This rule will relieve all parties of this additional proof burden, putting digital X-rays on a similar footing to film X-rays. So long as the regulatory quality standards are met, a party need not prove medical acceptability to have interpretations of digital X-rays admitted and considered.

The Department has considered whether the parties will realize any monetary benefits or incur any additional costs in light of this rule, and has concluded that it is a cost-neutral rule for several reasons. The rule expands opportunities for claimants and coal mine employers to obtain X-ray evidence. But it does not require any party to use digital X-ray systems. Thus, even if obtaining digital X-rays proved more costly, absorbing that cost is optional. In addition, the Department believes that medical facilities generally do not have different fee structures for film and digital radiographs. Instead, standard medical coding systems (*e.g.,* CPT codes) used to reimburse these facilities and process payments for chest X-rays use codes that do not reference the type of technology used to perform the X-rays. *See, e.g., http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/index.html.* Finally, to the extent miners are able to go to digital X-ray facilities closer to their homes, their lower travel costs—which in some instances are paid either by the Department or passed on to the coal mine operator if the miner prevails on his benefits claim, 20 CFR 725.406(e)—will result in some minor savings.

Executive Order 13563 also instructs agencies to review ''rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them.'' As explained in the section-by-section analysis above, this rule revises obsolete terms (*e.g.,* replacing ''roentgenogram'' with ''radiograph'' or ''X-ray'') and removes outmoded provisions (*e.g.,* eliminating X-ray rereading prohibition provisions).

Finally, because this is not a ''significant'' rule within the meaning of Executive Order 12866, the Office of Management and Budget has not reviewed it prior to publication.

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.,* directs agencies to assess the effects of Federal Regulatory Actions on State, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' 2 U.S.C. 1531. For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased expenditures by State, local, tribal governments, or increased expenditures by the private sector of more than $100,000,000.

D. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.* (RFA), requires agencies to evaluate the potential impacts of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions and to prepare an analysis (called a ''regulatory flexibility analysis'') describing those impacts. *See* 5 U.S.C. 601, 603–604. But if the rule is not expected to ''have a significant economic impact on a substantial number of small entities[,]'' the RFA allows an agency to so certify in lieu of preparing the analysis. *See* 5 U.S.C. 605.

The Department has determined that a regulatory flexibility analysis under the RFA is not required for this rulemaking. While many coal mine operators are small entities within the meaning of the RFA, *see* 77 FR 19471–72 (March 30, 2012), this rule will not have a significant economic impact on them for several reasons. First, this rule does not require operators to obtain digital radiographs. By promulgating quality standards specific to digital X-rays, the Department is simply providing another option to coal mine operators (and their insurers) for developing medical evidence in the BLBA claims process. Operators are free to continue to use film-based technology. Second, even if an operator chooses to obtain digital radiographs, the Department believes that the cost for obtaining a digital X-ray will be comparable if not identical to a film-X-ray's cost. In considering this issue, the Department reviewed the medical reimbursement schedule published by the U.S. Department of Health and

Human Services Centers for Medicare and Medicaid Services (CMS). The CMS schedule, which forms the basis for many public and private reimbursement schemes, does not differentiate between film-based and digitally acquired chest X-rays; instead, the schedule lists reimbursement computation formulas for different types of chest X-rays without reference to the technology used to obtain them. *See http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/index.html*). Moreover, NIOSH anticipates that lower costs for chest X-rays in general may result from medical facilities switching to digital radiography systems. *See* 77 FR 1372 (January 9, 2012). Third, this rule is expected to benefit all coal mine operators by increasing access to medical facilities that exclusively use digital radiography or are transitioning to this technology.

Based on these facts, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required. The Department invites comments from members of the public who believe the regulations will have a significant economic impact on a substantial number of small coal mine operators. The Department has provided the Chief Counsel for Advocacy of the Small Business Administration with a copy of this certification. *See* 5 U.S.C. 605.

E. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' E.O. 13132, 64 FR 43255 (Aug. 4, 1999). The proposed rule 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.'' *Id.*

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the 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. 61 FR 4729 (Feb. 5, 1996).

G. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. OWCP will report this rule's promulgation to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States simultaneously with publication of the rule in the **Federal Register**. The report will state that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 20 CFR Parts 718 and 725

Black lung benefits, Claims, Coal miners' entitlement to benefits, Incorporation by reference, Survivors' entitlement to benefits, Total disability due to pneumoconiosis, Workers' compensation, X-rays.

For the reasons set forth in the preamble, the Department of Labor amends 20 CFR parts 718 and 725 as follows:

PART 718—STANDARDS FOR DETERMINING COAL MINERS' TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

■ 1. The authority citation for part 718 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.,* 902(f), 934, 936; 33 U.S.C. 901 *et seq.;* 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

■ 2. Add § 718.5 to Subpart A to read as follows:

§ 718.5 Incorporations by reference.

(a) The materials listed in paragraphs (b) through (f) of this section are incorporated by reference in this part. The Director of the Federal Register has approved these incorporations by reference under 5 U.S.C. 522(a) and 1 CFR Part 51. To enforce any edition other than that specified in these regulations, OWCP must publish notice of change in the **Federal Register**. All approved material is available from the sources listed below. You may inspect a copy of the approved material at the Division of Coal Mine Workers' Compensation, OWCP, U.S. Department of Labor, Washington, DC. To arrange for an inspection at OWCP, call 202–693–0046. These materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federalregister/codeoffederalregulations/ibrlocations.html.*

(b) American Association of Physicists in Medicine, Order Department, Medical Physics Publishing, 4513 Vernon Blvd., Madison, WI 53705, *http://www.aapm.org/pubs/reports:*

(1) AAPM On-Line Report No. 03, Assessment of Display Performance for Medical Imaging Systems, April 2005, IBR approved for Appendix A to part 718, paragraph (d).

(2) AAPM Report No. 93, Acceptance Testing and Quality Control of Photostimulable Storage Phosphor Imaging Systems, October 2006, IBR approved for Appendix A to part 718, paragraph (d).

(c) American College of Radiology, 1891 Preston White Dr., Reston, VA 20191, *http://www.acr.org/~/media/ACR/Documents/PGTS/guidelines/Reference_Levels.pdf:*

(1) ACR Practice Guideline for Diagnostic Reference Levels in Medical X-Ray Imaging, Revised 2008 (Resolution 3), IBR approved for Appendix A to part 718, paragraph (d).

(2) [Reserved]

(d) International Labour Office, CH–1211 Geneva 22, Switzerland, *http://www.ilo.org/publns:*

(1) Occupational Safety and Health Series No. 22, Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, Revised edition 2011, IBR approved for § 718.102(d) and Appendix A to part 718, paragraph (d).

(2) Occupational Safety and Health Series No. 22 (Rev. 2000), Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, Revised edition 2000, IBR approved for § 718.102(d).

(3) Occupational Safety and Health Series No. 22 (Rev. 80), Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses, Revised edition 1980, IBR approved for § 718.102(d).

(e) National Council on Radiation Protection and Measurements, NCRP Publications, 7910 Woodmont Avenue, Suite 400, Bethesda, MD 20814–3095, Telephone (800) 229–2652, *http://www.ncrppublications.org:*

(1) NCRP Report No. 102, Medical X–Ray, Electron Beam, and Gamma–Ray Protection for Energies Up to 50 MeV (Equipment Design, Performance, and Use), issued June 30, 1989, IBR approved for Appendix A to part 718, paragraph (b).

(2) NCRP Report No. 105, Radiation Protection for Medical and Allied Health Personnel, issued October 30,

1989, IBR approved for Appendix A to part 718, paragraph (b).

(3) NCRP Report No. 147, Structural Shielding Design for Medical X–Ray Imaging Facilities, revised March 18, 2005, IBR approved for Appendix A to part 718, paragraph (b).

(f) National Electrical Manufacturers Association, 1300 N. 17th Street, Rosslyn, VA 22209, *http://medical.nema.org:*

(1) DICOM Standard PS 3.3–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 3: Information Object Definitions, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(2) DICOM Standard PS3.4–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 4: Service Class Specifications, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(3) DICOM Standard PS 3.10–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 10: Media Storage and File Format for Media Interchange, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(4) DICOM Standard PS 3.11–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 11: Media Storage Application Profiles, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(5) DICOM Standard PS 3.12–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 12: Media Formats and Physical Media for Media Interchange, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(6) DICOM Standard PS 3.14–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 14: Grayscale Standard Display Function, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(7) DICOM Standard PS 3.16–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 16: Content Mapping Resource, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

■ 3. Revise § 718.101(a) to read as follows:

§ 718.101 General.

(a) The Office of Workers' Compensation Programs (hereinafter OWCP or the Office) must develop the medical evidence necessary to determine each claimant's entitlement to benefits. Each miner who files a claim for benefits under the Act must be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation including, but not limited to, a chest radiograph (X-ray), physical examination, pulmonary function tests, and a blood-gas study.

* * * * *

■ 4. Revise § 718.102 to read as follows:

§ 718.102 Chest radiographs (X-rays).

(a) A chest radiograph (X-ray) must be of suitable quality for proper classification of pneumoconiosis and must conform to the standards for administration and interpretation of chest X-rays as described in appendix A to this part.

(b) Chest X-rays may be produced by either film or digital radiography systems as defined in Appendix A.

(c) The images described in paragraphs (c)(1) and (2) of this section will not be considered of suitable quality for proper classification of pneumoconiosis under this section:

(1) Digital images derived from film screen chest X-rays (*e.g.,* by scanning or digital photography); and

(2) Images that were acquired using digital systems and then printed on transparencies for back-lighted display (*e.g.,* using traditional view boxes).

(d) Standards for classifying radiographs:

(1) To establish the existence of pneumoconiosis, a film chest X-ray must be classified as Category 1, 2, 3, A, B, or C, in accordance with the International Labour Organization (ILO) classification system established in one of the following:

(i) Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, revised edition 2011 (incorporated by reference, *see* § 718.5).

(ii) Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, revised edition 2000 (incorporated by reference, *see* § 718.5).

(iii) Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses, revised edition 1980 (incorporated by reference, *see* § 718.5).

(2) To establish the existence of pneumoconiosis, a digital chest radiograph must be classified as Category 1, 2, 3, A, B, or C, in accordance with the ILO classification system established in Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, revised edition 2011.

(3) A chest radiograph classified under any of the foregoing ILO classification systems as Category 0, including subcategories 0-, 0/, or 0/1, does not constitute evidence of pneumoconiosis.

(e) An X-ray report must include the following:

(1) The name and qualifications of the person who took the X-ray.

(2) The name and qualifications of the physician who interpreted the X-ray. The interpreting physician must indicate whether he or she was a Board-certified radiologist, a Board-eligible radiologist, or a Certified B Reader as defined below on the date the interpretation was made.

(i) *Board-certified radiologist* means that the physician is certified in radiology or diagnostic radiology by the American Board of Radiology, Inc., or the American Osteopathic Association.

(ii) *Board-eligible radiologist* means that the physician has successfully completed a formal accredited residency program in radiology or diagnostic radiology.

(iii) *Certified B Reader* means that the physician has demonstrated ongoing proficiency in evaluating chest radiographs for radiographic quality and in the use of the ILO classification for interpreting chest radiographs for pneumoconiosis and other diseases by taking and passing a specially designed proficiency examination given on behalf of or by the National Institute for Occupational Safety and Health (NIOSH), and has maintained that certification through the date the interpretation is made. *See* 42 CFR 37.52(b).

(3) A description and interpretation of the findings in terms of the ILO classification described in paragraph (d) of this section.

(4) A statement that the X-ray was interpreted in compliance with this section.

(f) Radiograph submission: For film X-rays, the original film on which the X-ray report is based must be supplied to OWCP. For digital X-rays, a copy of the original digital object upon which the X-ray report is based, formatted to meet the standards for transmission of diagnostic chest images set forth in Appendix A, paragraph (d), must be provided to OWCP on a DVD or other media specified by OWCP. In cases where the law prohibits the parties or a physician from supplying the original film or a copy of the digital image, the report will be considered as evidence only if the original film or digital image is otherwise available to OWCP and the other parties.

(g) Where the chest X-ray of a deceased miner has been lost or destroyed, or is otherwise unavailable, a report of the chest X-ray submitted by any party may be considered in connection with the claim.

(h) Except as provided in this paragraph (h), no chest X-ray may constitute evidence of the presence or absence of pneumoconiosis unless it is conducted and reported in accordance with the requirements of this section and Appendix A. In the absence of evidence to the contrary, compliance with the requirements of Appendix A must be presumed. In the case of a deceased miner where the only available X-ray does not substantially comply with paragraphs (a) through (e) of this section, the X-ray may form the basis for a finding of the presence or absence of pneumoconiosis if it is of sufficient quality for determining whether pneumoconiosis is present and it was interpreted by a Board-certified radiologist, Board-eligible radiologist, or Certified B Reader.

■ 5. Revise § 718.202 to read as follows:

§ 718.202 Determining the existence of pneumoconiosis.

(a) A finding of the existence of pneumoconiosis may be made as follows in paragraphs (a)(1) through (4):

(1) A chest X-ray conducted and classified in accordance with § 718.102 may form the basis for a finding of the existence of pneumoconiosis. Except as otherwise provided in this section, where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration must be given to the radiological qualifications of the physicians interpreting such X-rays (*see* § 718.102(d)).

(2) A biopsy or autopsy conducted and reported in compliance with § 718.106 may be the basis for a finding of the existence of pneumoconiosis. A finding in an autopsy or biopsy of anthracotic pigmentation, however, must not be considered sufficient, by itself, to establish the existence of pneumoconiosis. A report of autopsy must be accepted unless there is evidence that the report is not accurate or that the claim has been fraudulently represented.

(3) If the presumptions described in § 718.304, § 718.305, or § 718.306 are applicable, it must be presumed that the miner is or was suffering from pneumoconiosis.

(4) A determination of the existence of pneumoconiosis may also be made if a physician, exercising sound medical judgment, notwithstanding a negative X-ray, finds that the miner suffers or suffered from pneumoconiosis as defined in § 718.201. Any such finding must be based on objective medical evidence such as blood-gas studies, electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories. Such a finding must be supported by a reasoned medical opinion.

(b) A claim for benefits must not be denied solely on the basis of a negative chest X-ray.

(c) A determination of the existence of pneumoconiosis must not be made—

(1) Solely on the basis of a living miner's statements or testimony; or

(2) In a claim involving a deceased miner, solely on the basis of the affidavit(s) (or equivalent testimony) of the claimant and/or his or her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved.

■ 6. Revise § 718.304 to read as follows:

§ 718.304 Irrebuttable presumption of total disability or death due to pneumoconiosis.

There is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis, that a miner's death was due to pneumoconiosis or that a miner was totally disabled due to pneumoconiosis at the time of death, if such miner is suffering or suffered from a chronic dust disease of the lung which:

(a) When diagnosed by chest X-ray (*see* § 718.202 concerning the standards for X-rays and the effect of interpretations of X-rays by physicians) yields one or more large opacities (greater than one centimeter in diameter) and would be classified in Category A, B, or C in accordance with the classification system established in Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses as provided in § 718.102(d); or

(b) When diagnosed by biopsy or autopsy, yields massive lesions in the lung; or

(c) When diagnosed by means other than those specified in paragraphs (a) and (b) of this section, would be a condition which could reasonably be expected to yield the results described in paragraph (a) or (b) of this section had diagnosis been made as therein described: *Provided, however,* that any diagnosis made under this paragraph must accord with acceptable medical procedures.

■ 7. Revise appendix A to part 718 to read as follows:

Appendix A to Part 718—Standards for Administration and Interpretation of Chest Radiographs (X-rays)

The following standards are established in accordance with sections 402(f)(1)(D) and 413(b) of the Act. They were developed in consultation with the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention in the Department of Health and Human Services. These standards are promulgated for the guidance of physicians and medical technicians to ensure that uniform procedures are used in administering and interpreting X-rays and that the best available medical evidence will be submitted in connection with a claim for black lung benefits. If it is established that one or more standards have not been met, the claims adjudicator may consider such fact in determining the evidentiary weight to be assigned to the physician's report of an X-ray.

(a) Definitions

(1) *Digital radiography systems,* as used in this context, include both digital radiography (DR) and computed radiography (CR). Digital radiography is the term used for digital X-ray image acquisition systems in which the X-ray signals received by the image detector are converted nearly instantaneously to electronic signals without moveable cassettes. Computed radiography is the term for digital X-ray image acquisition systems that detect X-ray signals using a cassette-based photostimulable storage phosphor. Subsequently, the cassette is processed using a stimulating laser beam to convert the latent radiographic image to electronic signals which are then processed and stored so they can be displayed.

(2) *Qualified medical physicist* means an individual who is trained in evaluating the performance of radiographic equipment including radiation controls and facility quality assurance programs, and has the relevant current certification by a competent U.S. national board, or unrestricted license or approval from a U.S. State or Territory.

(3) *Radiographic technique chart* means a table that specifies the types of cassette, intensifying screen, film or digital detector, grid, filter, and lists X-ray machine settings (timing, kVp, mA) that enables the radiographer to select the correct settings based on the body habitus or the thickness of the chest tissue.

(4) *Radiologic technologist* means an individual who has met the requirements for privileges to perform general radiographic procedures and for competence in using the equipment and software employed by the examining facility to obtain chest images as specified by the State or Territory and examining facility in which such services are provided. Optimally, such an individual will have completed a formal training program in radiography leading to a certificate, an associate's degree, or a bachelor's degree and participated in the voluntary initial certification and annual renewal of registration for radiologic technologists offered by the American Registry of Radiologic Technologists.

(5) *Soft copy* means the image of a coal miner's chest radiograph acquired using a digital radiography system, viewed at the full resolution of the image acquisition system using an electronic medical image display device.

(b) General provisions

(1) Facilities must maintain ongoing licensure and certification under relevant local, State, and Federal laws and regulations

for all digital equipment and related processes covered by this Appendix. Radiographic equipment, its use and the facilities (including mobile facilities) in which such equipment is used must conform to applicable State or Territorial and Federal regulations. Where no applicable regulations exist regarding reducing the risk from ionizing radiation exposure in the clinical setting, radiographic equipment, its use and the facilities (including mobile facilities) in which such equipment is used should conform to the recommendations in NCRP Report No. 102, NCRP Report No. 105, and NCRP Report No. 147 (incorporated by reference, *see* § 718.5).

(2) Chest radiographs of miners must be performed:

(i) By or under the supervision of a physician who makes chest radiographs in the normal course of practice and who has demonstrated ability to make chest radiographs of a quality to best ascertain the presence of pneumoconiosis; or

(ii) By a radiologic technologist.

(3) Miners must be disrobed from the waist up at the time the radiograph is given. The facility must provide a dressing area and for those miners who wish to use one, the facility will provide a clean gown. Facilities must be heated to a comfortable temperature.

(4) Before the miner is advised that the examination is concluded, the radiograph must be processed and inspected and accepted for quality standards by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist. In a case of a substandard radiograph, another must be made immediately.

(c) Chest radiograph specifications—film.

(1) Every chest radiograph must be a single posteroanterior projection at full inspiration on a film being no less than 14 by 17 inch film. Additional chest films or views must be obtained if they are necessary for clarification and classification. The film and cassette must be capable of being positioned both vertically and horizontally so that the chest radiograph will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then a projection with minimum loss of costophrenic angle must be made.

(2) Radiographs must be made with a diagnostic X-ray machine having a rotating anode tube with a maximum of a 2 mm source (focal spot).

(3) Except as provided in paragraph (c)(4), radiographs must be made with units having generators that comply with the following:

(i) Generators of existing radiographic units acquired by the examining facility prior to July 27, 1973, must have a minimum rating of 200 mA at 100 kVp;

(ii) Generators of units acquired subsequent to that date must have a minimum rating of 300 mA at 125 kVp. A generator with a rating of 150 kVp is recommended.

(4) Radiographs made with battery-powered mobile or portable equipment must be made with units having a minimum rating of 100 mA at 110 kVp at 500 Hz, or 200 mA at 110 kVp at 60 Hz.

(5) Capacitor discharge and field emission units may be used.

(6) Radiographs must be given only with equipment having a beam-limiting device that does not cause large unexposed boundaries. The use of such a device must be discernible from an examination of the radiograph.

(7) To ensure high quality chest radiographs:

(i) The maximum exposure time must not exceed 50 milliseconds except that with single phase units with a rating less than 300 mA at 125 kVp and subjects with chests over 28 cm postero-anterior, the exposure may be increased to not more than 100 milliseconds;

(ii) The source or focal spot to film distance must be at least 6 feet.

(iii) Medium-speed film and medium-speed intensifying screens are recommended. However, any film-screen combination, the rated ''speed'' of which is at least 100 and does not exceed 300, which produces radiographs with spatial resolution, contrast, latitude and quantum mottle similar to those of systems designated as ''medium speed'' may be employed;

(iv) Film-screen contact must be maintained and verified at 6-month or shorter intervals.

(v) Intensifying screens must be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer;

(vi) All intensifying screens in a cassette must be of the same type and made by the same manufacturer;

(vii) When using over 90 kV, a suitable grid or other means of reducing scattered radiation must be used;

(viii) The geometry of the radiographic system must ensure that the central axis (ray) of the primary beam is perpendicular to the plane of the film surface and impinges on the center of the film.

(8) Radiographic processing:

(i) Either automatic or manual film processing is acceptable. A constant time-temperature technique must be meticulously employed for manual processing.

(ii) If mineral or other impurities in the processing water introduce difficulty in obtaining a high-quality radiograph, a suitable filter or purification system must be used.

(9) An electric power supply must be used that complies with the voltage, current, and regulation specified by the manufacturer of the machine.

(10) A test object may be required on each radiograph for an objective evaluation of film quality at the discretion of the Department of Labor.

(11) Each radiograph made under this Appendix must be permanently and legibly marked with the name and address of the facility at which it is made, the miner's DOL claim number, the date of the radiograph, and left and right side of the film. No other identifying markings may be recorded on the radiograph.

(d) Chest radiograph specifications—digital radiography systems

(1) Every digital chest radiograph must be a single posteroanterior projection at full inspiration on a digital detector with sensor area being no less than 1505 square centimeters with a minimum width of 35 cm. The imaging plate must have a maximum pixel pitch of 200 μm, with a minimum bit depth of 10. Spatial resolution must be at least 2.5 line pairs per millimeter. The storage phosphor cassette or digital image detector must be positioned either vertically or horizontally so that the image includes the apices and costophrenic angles of both right and left lungs. If the detector cannot include the apices and costophrenic angles of both lungs as described, then the two side-by-side images can be obtained that together include the apices and costophrenic angles of both right and left lungs.

(2) Radiographs must be made with a diagnostic X-ray machine with a maximum actual (not nominal) source (focal spot) of 2 mm, as measured in two orthogonal directions.

(3) Radiographs must be made with units having generators which have a minimum rating of 300 mA at 125 kVp. Exposure kilovoltage must be at least the minimum as recommended by the manufacturer for chest radiography.

(4) An electric power supply must be used that complies with the voltage, current, and regulation specified by the manufacturer of the machine. If the manufacturer or installer of the radiographic equipment recommends equipment for control of electrical power fluctuations, such equipment must be used as recommended.

(5) Radiographs must be obtained only with equipment having a beam-limiting device that does not cause large unexposed boundaries. The beam limiting device must provide rectangular collimation. Electronic post-image acquisition ''shutters'' available on some CR or DR systems that limit the size of the final image and that simulate collimator limits must not be used. The use and effect of the beam limiting device must be discernible on the resulting image.

(6) Radiographic technique charts must be used that are developed specifically for the X-ray system and detector combinations used, indicating exposure parameters by anatomic measurements.

(7) To ensure high quality chest radiographs:

(i) The maximum exposure time must not exceed 50 milliseconds except for subjects with chests over 28 cm posteroanterior, for whom the exposure time must not exceed 100 milliseconds.

(ii) The distance from source or focal spot to detector must be at least 70 inches (or 180 centimeters if measured in centimeters).

(iii) The exposure setting for chest images must be within the range of 100–300 equivalent exposure speeds and must comply with ACR Practice Guidelines for Diagnostic Reference Levels in Medical X-ray Imaging, Section V—Diagnostic Reference Levels for Imaging with Ionizing Radiation and Section VII—Radiation Safety in Imaging (incorporated by reference, *see* § 718.5). Radiation exposures should be periodically measured and patient radiation doses estimated by the medical physicist to assure doses are as low as reasonably achievable.

(iv) Digital radiography system performance, including resolution, modulation transfer function (MTF), image signal-to-noise and detective quantum

efficiency must be evaluated and judged acceptable by a qualified medical physicist using the specifications in AAPM Report No. 93, pages 1–68 (incorporated by reference, *see* § 718.5). Image management software and settings for routine chest imaging must be used, including routine amplification of digital detector signal as well as standard image post-processing functions. Image or edge enhancement software functions must not be employed unless they are integral to the digital radiography system (not elective); in such cases, only the minimum image enhancement permitted by the system may be employed.

(v)(A) The image object, transmission and associated data storage, film format, and transmissions of associated information must conform to the following components of the Digital Imaging and Communications in Medicine (DICOM) standard (incorporated by reference, *see* § 718.5):

(*1*) DICOM Standard PS 3.3–2011, Annex A—Composite Information Object Definitions, sections: Computed Radiographic Image Information Object Definition; Digital X-Ray Image Information Object Definition; X-Ray Radiation Dose SR Information Object Definition; and Grayscale Softcopy Presentation State Information Object Definition.

(*2*) DICOM Standard PS 3.4–2011: Annex B—Storage Service Class; Annex N—Softcopy Presentation State Storage SOP Classes; Annex O—Structured Reporting Storage SOP Classes.

(*3*) DICOM Standard PS 3.10–2011.

(*4*) DICOM Standard PS 3.11–2011.

(*5*) DICOM Standard PS 3.12–2011.

(*6*) DICOM Standard PS 13.14–2011.

(*7*) DICOM Standard PS 3.16–2011.

(B) Identification of each miner, chest image, facility, date and time of the examination must be encoded within the image information object, according to DICOM Standard PS 3.3–2011, Information Object Definitions, for the DICOM ''DX'' object. If data compression is performed, it must be lossless. Exposure parameters (kVp, mA, time, beam filtration, scatter reduction, radiation exposure) must be stored in the DX information object.

(C) Exposure parameters as defined in the DICOM Standard PS 3.16–2011 must additionally be provided when such parameters are available from the facility digital image acquisition system or recorded in a written report or electronic file and transmitted to OWCP.

(8) A specific test object may be required on each radiograph for an objective evaluation of image quality at the Department of Labor's discretion.

(9) CR imaging plates must be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer.

(10) A grid or air gap for reducing scattered radiation must be used; grids must not be used that cause Moiré interference patterns in either horizontal or vertical images.

(11) The geometry of the radiographic system must ensure that the central axis (ray) of the primary beam is perpendicular to the plane of the CR imaging plate or DR detector and is correctly aligned to the grid.

(12) Radiographs must not be made when the environmental temperatures and humidity in the facility are outside the manufacturer's recommended range of the CR and DR equipment to be used.

(13) All interpreters, whenever classifying digitally acquired chest radiographs, must have immediately available for reference a complete set of ILO standard digital chest radiographic images provided for use with the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (2011 Revision) (incorporated by reference, *see* § 718.5). Modification of the appearance of the standard images using software tools is not permitted.

(14) Viewing systems should enable readers to display the coal miner's chest image at the full resolution of the image acquisition system, side-by-side with the selected ILO standard images for comparison.

(i)(A) Image display devices must be flat panel monitors displaying at least 3 MP at 10 bit depth. Image displays and associated graphics cards must meet the calibration and other specifications of the Digital Imaging and Communications in Medicine (DICOM) standard PS 3.14–2011 (incorporated by reference, *see* § 718.5).

(B) Image displays and associated graphics cards must not deviate by more than 10 percent from the grayscale standard display function (GSDF) when assessed according to the AAPM On-Line Report No. 03, pages 1–146 (incorporated by reference, *see* § 718.5).

(ii) Display system luminance (maximum and ratio), relative noise, linearity, modulation transfer function (MTF), frequency, and glare should meet or exceed recommendations listed in AAPM On-Line Report No. 03, pages 1–146 (incorporated by reference, *see* § 718.5). Viewing displays must have a maximum luminance of at least 171 cd/m^2, a ratio of maximum luminance to minimum luminance of at least 250, and a glare ratio greater than 400. The contribution of ambient light reflected from the display surface, after light sources have been minimized, must be included in luminance measurements.

(iii) Displays must be situated so as to minimize front surface glare. Readers must minimize reflected light from ambient sources during the performance of classifications.

(iv) Measurements of the width and length of pleural shadows and the diameter of opacities must be taken using calibrated software measuring tools. If permitted by the viewing software, a record must be made of the presentation state(s), including any noise reduction and edge enhancement or restoration functions that were used in performing the classification, including any annotations and measurements.

(15) Quality control procedures for devices used to display chest images for classification must comply with the recommendations of the American Association of Physicists in Medicine AAPM On-Line Report No. 03, pages 1–146 (incorporated by reference, *see* § 718.5). If automatic quality assurance systems are used, visual inspection must be performed using one or more test patterns recommended by the medical physicist every 6 months, or more frequently, to check for defects that automatic systems may not detect.

(16) Classification of CR and DR digitally-acquired chest radiographs under this Part must be performed based on the viewing images displayed as soft copies using the viewing workstations specified in this section. Classification of radiographs must not be based on the viewing of hard copy printed transparencies of images that were digitally-acquired.

(17) The classification of chest radiographs based on digitized copies of chest radiographs that were originally acquired using film-screen techniques is not permissible.

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 8. The authority citation for part 725 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.,* 902(f), 921, 932, 936; 33 U.S.C. 901 *et seq.;* 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

■ 9. In § 725.406, revise paragraphs (a), (b), (c) and (e) to read as follows:

§ 725.406 Medical examinations and tests.

(a) The Act requires the Department to provide each miner who applies for benefits with the opportunity to undergo a complete pulmonary evaluation at no expense to the miner. A complete pulmonary evaluation includes a report of physical examination, a pulmonary function study, a chest radiograph, and, unless medically contraindicated, a blood gas study.

(b) As soon as possible after a miner files an application for benefits, the district director will provide the miner with a list of medical facilities and physicians in the state of the miner's residence and states contiguous to the state of the miner's residence that the Office has authorized to perform complete pulmonary evaluations. The miner must select one of the facilities or physicians on the list, provided that the miner may not select any physician to whom the miner or the miner's spouse is related to the fourth degree of consanguinity, and the miner may not select any physician who has examined or provided medical treatment to the miner within the twelve months preceding the date of the miner's application. The district director will make arrangements for the miner to be given a complete pulmonary evaluation by that facility or physician. The results of the complete pulmonary evaluation must not be counted as evidence submitted by the miner under § 725.414.

(c) If any medical examination or test conducted under paragraph (a) of this section is not administered or reported in substantial compliance with the provisions of part 718 of this subchapter, or does not provide sufficient information to allow the district director to decide whether the miner is eligible for benefits, the district director must schedule the miner for further examination and testing. Where the deficiencies in the report are the result of a lack of effort on the part of the miner, the miner will be afforded one additional opportunity to produce a satisfactory result. In order to determine whether any medical examination or test was administered and reported in substantial compliance with the provisions of part 718 of this subchapter, the district director may have any component of such examination or test reviewed by a physician selected by the district director.

* * * * *

(e) The cost of any medical examination or test authorized under this section, including the cost of travel to and from the examination, must be paid by the fund. Reimbursement for overnight accommodations must not be authorized unless the district director determines that an adequate testing facility is unavailable within one day's round trip travel by automobile from the miner's residence. The fund must be reimbursed for such payments by an operator, if any, found liable for the payment of benefits to the claimant. If an operator fails to repay such expenses, with interest, upon request of the Office, the entire amount may be collected in an action brought under section 424 of the Act and § 725.603 of this part.

Signed at Washington, DC, this 3rd day of June, 2013.

Gary A. Steinberg,

Acting Director, Office of Workers' Compensation Programs.

[FR Doc. 2013–13970 Filed 6–12–13; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9612]

RIN 1545–BA53

Noncompensatory Partnership Options; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting Amendment.

SUMMARY: This document contains corrections to final regulations (TD 9612) that were published in the **Federal Register** on Tuesday, February 5, 2013 (78 FR 7997) relating to the tax treatment of noncompensatory options and convertible instruments issued by a partnership. The final regulations generally provide that the exercise of a noncompensatory option does not cause the recognition of immediate income or loss by either the issuing partnership or the option holder. The final regulations also modify the regulations under section 704(b) regarding the maintenance of the partners' capital accounts and the determination of the partners' distributive shares of partnership items. The final regulations also contain a characterization rule providing that the holder of a noncompensatory option is treated as a partner under certain circumstances.

DATES: This correction is effective on June 13, 2013 and is applicable on or after February 5, 2013.

FOR FURTHER INFORMATION CONTACT: Benjamin Weaver, at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under sections 171, 704, 721, 761, 1272, 1273, and 1275 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9612) contains an error that may prove to be misleading and is 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 1.704–1 is amended by revising the third sentence of paragraph (b)(5) *Example 32*(v) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(5) * * *

Example 32. * * *

(v) * * * Under paragraph (b)(4)(x)(*c*) of this section, LLC must allocate the book gross income of $3,000 equally among A, B, and C, but for tax purposes, however, LLC must allocate all of its gross income ($3,000) to C. * * *

* * * * *

Martin Franks,

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

[FR Doc. 2013–14018 Filed 6–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. OSHA–2013–0005]

RIN 1218–AC77

Updating OSHA Standards Based on National Consensus Standards; Signage

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: The Occupational Safety and Health Administration (''OSHA'' or ''the Agency'') is issuing this direct final rule to update its general industry and construction signage standards by adding references to the latest versions of the American National Standards Institute (''ANSI'') standards on specifications for accident prevention signs and tags, ANSI Z535.1–2006(R2011), Z535.2–2011 and Z535.5–2011. In this rulemaking, OSHA is retaining the existing references to the earlier ANSI standards, ANSI Z53.1–1967, Z35.1–1968 and Z35.2–1968, in its signage standards, thereby providing employers an option to comply with the updated or earlier standards. OSHA also is incorporating by reference Part VI of the Manual of Uniform Traffic Control Devices (''MUTCD''), 1988 Edition, Revision 3, into the incorporation-by-reference section of the construction standards having inadvertently omitted this edition of the MUTCD from this section during an earlier rulemaking, and amending citations in two provisions of the construction standards to show the correct incorporation-by-reference section. In addition, OSHA is publishing a notice of proposed rulemaking in today's **Federal Register** adding the same references.

DATES: This direct final rule will become effective on September 11, 2013 unless OSHA receives a significant adverse comment to this direct final rule or the companion proposal by July 15, 2013. If OSHA receives a significant adverse comment, the Agency will publish a timely withdrawal of the direct final rule in the **Federal Register**.

Submit comments on this direct final rule (including comments on the information-collection (paperwork) determination described under the section titled Procedural Determinations, hearing requests, and other information by July 15, 2013. All submissions must bear a postmark or provide other evidence of the submission date (the following section titled **ADDRESSES** describes the available methods of making submissions).

The Director of the Federal Register approved the incorporation by reference of specific publications listed in this direct final rule as of September 11, 2013.

ADDRESSES: Submit comments, hearing requests, and other information as follows:

• *Electronic.* Submit comments electronically to *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

• *Facsimile.* OSHA allows facsimile transmission of comments and hearing requests that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693–1648; OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (*e.g.*, studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (*i.e.*, OSHA–2013–0005) so that the Agency can attach them to the appropriate document.

• *Regular mail, express delivery, hand delivery, and messenger (courier) service.* Submit comments and any additional material (*e.g.*, studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2013–0005 or RIN 1218–AC77, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures for delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.

• *Instructions.* All submissions must include the Agency name and the OSHA docket number (*i.e.*, OSHA Docket No. OSHA–2013–0005). OSHA will place comments and other material, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

OSHA invites comments on all issues related to this direct final rule. The Agency also welcomes comments on its findings that this direct final rule would have no negative economic, paperwork, or other regulatory impacts on the regulated community. This direct final rule is the companion document of a notice of proposed rulemaking published in the ''Proposed Rules'' section of today's **Federal Register**. If OSHA receives no significant adverse comment on this direct final rule, the Agency will publish a **Federal Register** notice confirming the effective date of the final rule and withdrawing the companion proposed rule. The final rule may include minor stylistic or technical corrections of the direct final rule. For the purpose of judicial review, OSHA considers the date that the Agency confirms the effective date of the final rule to be the date of issuance. If, however, OSHA receives a significant adverse comment on the direct final rule or proposal, the Agency will publish a timely withdrawal of this direct final rule and proceed with the proposed rule, which addresses the same revisions of its signage standards.

• *Docket.* The electronic docket for this direct final rule established at *http://www.regulations.gov* lists most of the documents in the docket. Some information (*e.g.*, copyrighted material), however, cannot be read or downloaded through this Web site. All submissions, including copyrighted material, are accessible at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: *General information and press inquiries:* Contact Frank Meilinger, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–1999.

Technical inquiries: Contact Kenneth Stevanus, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–2260; fax: (202) 693–1663.

SUPPLEMENTARY INFORMATION: *Copies of this **Federal Register** notice.* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

Availability of Incorporated Standards. With the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51, OSHA incorporates by reference under 29 CFR 1910.6, and 1926.6 the American National Standards Institute (''ANSI'') standards cited in 29 CFR 1910.97(a)(3)(ii); 1910.145(d)(2), (d)(4), and (d)(6); 1910.261(c)(16); and 1926.200(b)(1), (c)(1), (c)(3), (g)(2), (h)(2), and (i). OSHA also is incorporating by reference under 29 CFR 1926.6 Part VI of the MUTCD, 1988 Edition, Revision 3. To enforce any other version of the cited ANSI standards other than the editions specified by 29 CFR 1910.97(a)(3)(ii); 1910.145(d)(2), (d)(4), and (d)(6); 1910.261(c)(16); and 1926.200(b)(1), (c)(1), (c)(3), (g)(2), (h)(2) and (i), or to enforce any other version of the cited edition of the MUTCD specified by 29 CFR 1926.200(g)(2); 1926.201(a); and 1926.202, OSHA must publish a notice of change in the **Federal Register**, and must make the material available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, telephone (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, the material is available for inspection at any OSHA Regional Office or the OSHA Docket Office (U.S. Department of Labor, 200 Constitution Ave. NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627)).

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I. Direct Final Rulemaking

In a direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** along with a statement that the rule will become effective unless the agency receives a significant adverse comment within a specified period. The agency also publishes concurrently with the direct final rule an identical proposed rule. If the agency receives no significant adverse comment, the direct final rule will become effective. However, should the agency receive a significant adverse comment, the agency will withdraw the direct final rule and treat the comments as submissions on the proposed rule.

OSHA uses direct final rules because it expects the rulemaking to be noncontroversial; provide protection to employees that is at least equivalent to the protection afforded to them by the previous standard-development organization standard; and impose no significant new compliance costs on employers (69 FR 68283, 68285 (2004)). OSHA used direct final rules previously to update or, when appropriate, revoke references to previous national consensus standards in OSHA rules (*see, e.g.,* 69 FR 68283 (2004); 70 FR 76979 (2006); 76 FR 75782 (2011); and 77 FR 37587 (2012)).

For the purposes of this direct final rule, a significant adverse comment is one that ''explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change'' (*see* 60 FR 43108, 43111(1995)). In determining whether a comment necessitates withdrawal of the direct final rule, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. OSHA will not consider a comment recommending additional revisions to a rule to be a significant adverse comment unless the comment states why the direct final rule would be ineffective without the revisions. If OSHA receives a timely significant adverse comment, it will publish a **Federal Register** notice withdrawing the direct final rule no later than 90 days after the publication date of this current notice.

This direct final rulemaking furthers the objectives of Executive Order 13563, which requires that the regulatory process ''promote predictability and reduce uncertainty'' and ''identify and use the best, most innovative and least burdensome tools for achieving regulatory ends.'' As described below, the revisions will make the requirements of OSHA's signage standards consistent with the most recent national consensus standards, thereby eliminating confusion and clarifying employers' obligations (for the purposes of this rulemaking, the term ''signage standards'' refers to standards that regulate both signs and tags). Therefore, OSHA believes that these revisions will not compromise the safety of employees, but will instead enhance employee protection. Accordingly, the Agency concludes that updating the references to the national consensus standards in its signage standards is consistent with, and promotes the objectives of, Executive Order 13563.

II. Background

In June 2009, the National Electrical Manufacturers Association (NEMA) contacted OSHA and, based on a letter from ANSI, requested that the Agency add references to the latest versions of ANSI's Z535 series of standards to OSHA's signage standards. Letter dated June 2, 2009, from Kyle Pitsor, Vice President, Government Relations, NEMA, to Richard Fairfax, Director, Directorate of Enforcement Programs, OSHA (Ex. OSHA–2013–0005–0003, p. 1), attaching a letter dated May 28, 2009, from Geoffrey Peckham, Chair, ANSI Z535.2 Subcommittee, to Mr. Fairfax (Ex. OSHA–2013–0005–0003, p. 3). NEMA specifically advocated incorporating by reference ANSI Z535.2, ''Environmental and Facility Safety Signs,'' in OSHA standards that refer to old[1] versions of this ANSI standard. Pitsor letter (Ex. OSHA–2013–0005–0003, p. 1); *accord* Peckham letter (Ex. OSHA–2013–0005–0003, p. 3).

Over the next few years, OSHA staff met with NEMA several times to discuss the association's request that OSHA adopt ANSI's Z535 series of standards. Besides urging OSHA to incorporate ANSI Z535.2 by reference, NEMA also asked the Agency to update its standards' references to ANSI Z53.1–67, ''Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment,'' by citing the current version of this standard, ANSI Z535.1, ''Safety Colors.'' As a result of these meetings and as recorded in a second letter to OSHA, NEMA provided the Agency with side-by-side comparisons of ANSI Z35.1–68, Z535.2–2007, and Z535.2–2011, and ANSI Z53.1–67, Z535.1–2006, and Z535.1–2006(R2011), and other relevant materials such as signs, which OSHA evaluated. Letter dated March 30, 2011, from Evan Gaddis, President and CEO, NEMA, to Dr. David Michaels, Assistant Secretary of Labor for Occupational Safety and Health; Side–by-Side Comparisons of ANSI standards; NEMA Signage Materials (Exs. OSHA–2013–0005–0004 through –0006). OSHA also subsequently considered whether it should also incorporate by reference ANSI Z535.5, ''Safety Tags and Barricade Tapes (for Temporary Hazards),'' into those OSHA standards that refer to a much older version of this ANSI standard.

At present, employers continue to use the old signs and tags not only because they are long-lasting and rarely need replacing, but also because they comply with OSHA's current signage standards, which incorporate the old ANSI standards by reference. Both NEMA and ANSI contend that incorporating the new ANSI standards by reference is necessary to encourage employers to buy and use signs and tags that comply with these standards without receiving a *de minimis* notice for failure to comply with the old ANSI standards.[2] Pitsor letter (Ex. OSHA–2013–0005–0003, p. 1); Peckham letter (Ex. OSHA–2013–0005–0003, p. 3).

NEMA and ANSI further assert that signs and tags meeting the latest version

[1] The terms ''old'' and ''older,'' as used in this **Federal Register** notice, refer specifically to signs or tags that comply with ANSI Z53.1–1967, Z35.1–1968 and Z35.2–1968.

[2] According to *OSHA's Field Operations Manual (FOM),* a *de minimis* condition occurs when ''[a]n employer has implemented a measure different than the one specified in a standard, that has no direct or immediate relationship to safety or health.'' *FOM,* CPL 02–00–150, Ch. 4, § VIII, pp. 4–36 to 4–37 (Apr. 22, 2011), available on OSHA's Web page. OSHA issues no citations or penalties for these conditions, but compliance officers will document the condition during an inspection. *Id.* at 4–36. *See, also,* Letter of Interpretation dated February 22, 2011, from Thomas Galassi, Director, Directorate of Enforcement Programs, OSHA, to Richard A. Eichel, ATA Safety, describing OSHA's *de minimis* enforcement policy with regard to ANSI signs; available at *http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27641.*

of the ANSI standards, the Z535 series, provide an equal or greater level of protection than the currently required signs that comply with the old ANSI standards, Z35.1, Z35.2, and Z53.1, cited in OSHA's standards. Pitsor letter (Ex. OSHA–2013–0005–0003, p. 1); Peckham letter (Ex. OSHA–2013–0005–0003, p. 3). In its letter, ANSI provides an exhibit demonstrating why it believes the new Z535.2–2007 signs are at least as protective as the old Z35.1 signs (Peckham letter, Ex. OSHA–2013–0005–0003, p. 10 (Peckham's Ex. 6).[3] The exhibit, which compares the information contained in the two sets of signs, shows that the new Z535.2 signs typically have at least as much information as the Z35.1 signs. Moreover, the new ANSI safety-color standard, ANSI Z535.1–2006(2011), includes two safety colors, brown and gray, that were not in Z53.1–1967. *See* ANSI Z535.1–2006(2011), pp. v–vi (ANSI also added safety blue in the 1979 revision after deleting this color in the 1971 revision).

ANSI and NEMA also claim that the new signs provide additional information, including the specific identity of the hazard, a description of how serious the hazard is, how to avoid the hazard, and the probable consequences of not avoiding the hazard. Peckham letter (Exs. OSHA–2013–0005–0003, pp. 7–9, and OSHA–2013–0005–0006, pp. 9–11). ANSI further argues that, the old sign formats ''lack the ability to contain [the] symbols, more extensive word messages, multiple messages, and additional languages'' necessary to communicate critical safety information to an increasingly multicultural work force. *Id.,* pp. 6 and 9–10. NEMA also submitted an ANSI timeline of the institute's standards, and the safety signs that complied with those standards, for the years 1914 to 2011; this timeline illustrates additions made to the information contained in these signs during this period. NEMA Signage Materials, pp. 6–8 (Ex. OSHA–2013–0005–0006). Based on the available record, OSHA believes that the new signs are at least as protective as the old ones. Therefore, this direct final rule is incorporating the ANSI Z535 series by reference in the applicable OSHA signage standards so that employers will be able to buy and use the new signs without the prospect of receiving *de minimis* notices for using noncompliant signs. OSHA invites the public to comment on its conclusion that the new signs are as effective as the old ones.

[3] This exhibit is actually Exhibit 6 of the Peckham letter, but is mislabeled as Exhibit 5.

III. Summary and Explanation of Revisions to the Signage Standards

As discussed in a previous **Federal Register** notice (69 FR 68283 (2004)), OSHA is undertaking a series of projects to update its standards to incorporate the latest versions of national consensus and industry standards. These projects include updating or removing national consensus and industry standards cited in existing OSHA standards, updating the text of standards that OSHA adopted directly from previous national consensus standards, and, when appropriate, replacing specific references to previous national consensus and industry standards with performance requirements.

This direct final rule updates the references to ANSI consensus standards in four provisions of OSHA's general industry and construction standards: 29 CFR 1910.97, Nonionizing radiation; § 1910.145, Specifications for accident prevention signs and tags; § 1910.261, Pulp, paper, and paper board mills; and § 1926.200, Accident prevention signs and tags. These provisions incorporate by reference ANSI consensus standards Z53.1–1967, ''Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment''; Z35.1–1968, ''Specifications for Accident Prevention Signs''; and Z35.2–1968, ''Specifications for Accident Prevention Tags.'' The direct final rule will allow employers to comply with either these ANSI standards or the latest versions of them, Z535.1–2006(R2011), Z535.2–2011, and Z535.5–2011. The latter compliance option will allow employers to update their signage based on the newest ANSI consensus standards without violating OSHA's requirements. In addition, since employers will not have to update their signage, there is no additional compliance cost or burden resulting from this rulemaking. The direct final rule will revise the above four provisions in the following ways:

(1) OSHA's general industry standard on nonionizing radiation at § 1910.97(a)(3)(ii) requires employers to use the color specification provided by ANSI 53.1–1953, ''Safety Color Code for Marking Physical Hazards,'' which OSHA incorporated by reference under § 1910.6 in 1974 (39 FR 23502 (1974)). Currently, § 1910.6 refers to ANSI Z53.1–1967, ''Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment'' because, on March 7, 1996, OSHA incorporated ANSI Z53.1–1967 by reference under § 1910.6 without revising the reference to ANSI Z53.1–1953 in § 1910.97(a)(3)(ii) (*see* 61 FR 9228, 9232 (1996)). In addition, OSHA did not obtain approval from the Office of the Federal Register during the 1996 rulemaking to incorporate ANSI Z53.1–1967 by reference under § 1910.6. With this direct final rule, OSHA is correcting this oversight by incorporating ANSI Z53.1–1967 by reference under § 1910.6 after obtaining approval to do so from the Office of the Federal Register. In addition, this direct final rule will update the nonionizing radiation provision by incorporating ANSI Z535.1–2006(R2011), ''Safety Colors,'' by reference. This addition will allow employers to comply with the 1967 version or the 2006(R2011) version of the cited ANSI standard.

(2) OSHA's general industry standard on specifications for accident-prevention signs and tags at § 1910.145 refers to ANSI standard Z53.1–1967, ''Safety Colors for Marking Physical Hazards and the Identification of Certain Equipment,'' which § 1910.6 incorporated by reference in three places: §§ 1910.145(d)(2), Danger signs; 1910.145(d)(4), Caution signs; and 1910.145(d)(6), Safety instruction signs. However, as noted above, the Office of the Federal Register *did not* approve ANSI Z53.1–1967 for incorporation by reference under § 1910.6. Therefore, this direct final rule is correcting this oversight by incorporating that ANSI standard by reference under § 1910.6 after receiving approval from the Office of the Federal Register to do so.

Each of the three cited provisions of § 1910.145(d) specifies the colors employers must use for each type of sign, and requires that the signs meet the specifications in Table 1, ''Fundamental Specification of Safety Colors for CIE Standard Source 'C,' '' of ANSI Z53.1–1967. The direct final rule will update each of these sections by referencing Table 1, ''Specification of the Safety Colors for CIE Illuminate C and the CIE 1931, 2° Standard Observer,'' of ANSI Z535.1–2006(R2011), ''Safety Colors,'' which it incorporates by reference. This addition will allow employers to comply with the 1967 version or the 2006(R2011) version of the cited ANSI standard.

(3) OSHA's general industry standard on pulp, paper, and paper board mills at § 1910.261 refers to ANSI Z35.1–1968, ''Specifications for Accident Prevention Signs,'' which § 1910.6(e)(59) incorporates by reference in two places. First, § 1910.261(c)(16) refers to this 1968 ANSI standard. The direct final rule will update § 1910.261(c)(16) by incorporating ANSI Z535.2–2011, ''Environmental and Facility Safety Signs,'' by reference in § 1910.6(e)(60). This addition will allow

employers to comply with the 1968 version or the 2011 version of the cited ANSI standard.

Second, § 1910.6(e)(59) incorporates Z35.1–1968, ''Specifications for Accident Prevention Signs,'' by reference in § 1910.261(a)(3)(xxiv). However, on June 18, 1998, as part of an OSHA rulemaking, the Agency removed subsection § 1910.261(a)(3)(xxiv) from the pulp, paper, and paper board mills standard, but did not remove the reference to § 1910.261(a)(3)(xxiv) in § 1910.6(e)(59). The direct final rule will correct this oversight.

(4) OSHA's construction standard on accident prevention signs and tags, § 1926.200, refers to ANSI standards Z35.1–1968, ''Specifications for Accident Prevention Signs''; Z35.2–1968, ''Specifications for Accident Prevention Tags''; or Z53.1–1967, ''Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment,'' in five places discussed below.[4] In addition, as discussed below, § 1926.200 is incorporating by reference Part VI of the MUTCD, 1988 Edition, Revision 3.

The first reference to one of these old ANSI standards is in § 1926.200(b)(1), Danger signs, which refers to Figure G–1, which is identical to Figure 1 in ANSI Z35.1–1968, ''Specifications for Accident Prevention Signs.'' The second reference is in § 1926.200(c)(1), Caution signs, which refers to Figure G–2, which is identical to Figure 4 in the same ANSI standard. The direct final rule will remove Figures G–1 and G–2 from § 1926.200(b)(1) and (c)(1), and update these provisions by referencing the appropriate figures from ANSI Z35.1–1968 and ANSI Z535.2–2011, ''Environmental and Facility Safety Signs.'' These revisions, therefore, will give employers the option of using the figures from either ANSI standard.

The third reference to an old ANSI standard is in § 1926.200(c)(3), which refers to ANSI Z53.1–1967, ''Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment.'' This OSHA provision specifies the colors employers must use in caution signs, and requires that the signs meet the specifications in Table 1 of ANSI Z53.1–1967. This direct final rule will update § 1926.200(c)(3) by adding a reference to Table 1 of ANSI Z535.1–2006(R2011), ''Safety Colors,'' the latest version of Z53.1–1967. This addition, therefore, will allow employers to use either Table 1 of Z53.1–1967 or Table 1 of Z535.1–2006(R2011).

The fourth reference to an old ANSI standard is in § 1926.200(h)(2), Accident prevention tags, which says that specifications for accident-prevention tags similar to the specifications in Table G–1 apply; OSHA based Table G–1 on Figures 1 to 4 in ANSI Z35.2–1968, ''Specifications for Accident Prevention Tags.'' The direct final rule will remove Table G–1 from § 1926.200(h)(2), and update this provision by referencing Figures 1 to 4 of ANSI Z35.2–1968 and Figures 1 to 8 of Z535.5–2011, ''Safety Tags and Barricade Tapes (for Temporary Hazards).'' These revisions, therefore, will give employers the option of using the figures from either ANSI standard.

The fifth reference to the old ANSI standards is in § 1926.200(i), which refers to ANSI Z35.1–1968, ''Specifications for Accident Prevention Signs,'' and Z35.2–1968, ''Specifications for Accident Prevention Tags.'' Section 1926.200(i) requires employers to follow these two ANSI standards with respect to OSHA rules not specifically prescribed in 29 CFR 1926, subpart G. This direct final rule will update § 1926.200(i) by adding Z535.2–2011, ''Environmental and Facility Safety Signs,'' and Z535.5–2011, ''Safety Tags and Barricade Tapes (for Temporary Hazards),'' the latest versions of the cited ANSI standards, as references. These additions will allow employers to comply with Z35.1–1968 or Z535.2–11 for signs, and Z35.2–1968 or Z535.5–11 for tags.

This direct final rule also will update paragraph (g)(2) of § 1926.200 by removing the language referring to the Director of the Federal Register's approval for incorporation by reference of Part VI of the 1988 Edition, Revision 3, of the MUTCD, and adding a reference to § 1926.6 instead (i.e., this reference indicates such approval). Additionally, in an earlier rulemaking (*see* 75 FR 47906, 48132 (2010)), OSHA inadvertently removed Part VI of the MUTCD from § 1926.6. This direct final rule will correct this oversight by returning the reference to Part VI of the MUTCD to § 1926.6; it also will remove the reference to § 1926.200(g)(2) as the incorporation-by-reference provision in § 1926.201(a) and § 1926.202, and replace it with a reference to § 1926.6.

In summary, OSHA believes, based on the discussion above under Background, that many general industry and construction employers currently comply with the ANSI signage requirements incorporated by reference in its existing signage standards, *i.e.,* ANSI Z35.1–1968, Z35.2–1968, and Z53.1–1967. Therefore, OSHA is retaining these requirements in its signage standards. OSHA also determined that the latest editions of the ANSI signage standards, *i.e.,* Z535.1–2006(R2011), Z535.2–2011, and Z535.5–2011, provide at least as effective protection to employees as the old ANSI standards incorporated by reference in the Agency's signage standards. Accordingly, OSHA is giving employers the option of complying with the old or the new ANSI standards. Since employers can choose to comply with OSHA's existing signage standards, incorporating the new ANSI standards by reference will not increase the cost or burden of compliance.

IV. Procedural Determinations

A. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 65–78, is to achieve to the extent possible safe and healthful working conditions for all employees. 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654(b), 655(b). A safety or health standard is a standard that ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) of the OSH Act when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk. *See Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607 (1980). OSHA already determined that requirements specified by signage standards, including design requirements, are reasonably necessary or appropriate within the meaning of Section 652(8) (*see, e.g.,* 49 FR 49726, 49737 (1978); 51 FR 33251, 33251–33259 (1986)).

This direct final rule neither reduces employee protection nor alters an employer's obligations under the existing standards. Under this direct final rule, employers will be able to continue to use the same signs and tags they are using currently to meet their compliance obligations under the existing standards' design-criteria requirements. This direct final rule provides employers with additional

[4] Although § 1926.200(c)(3) currently refers to ANSI Z53.1–1967, OSHA did not incorporate that ANSI standard by reference under § 1926.6. This direct final rule, therefore, is correcting this oversight by incorporating ANSI Z53.1–1967 by reference under § 1926.6.

options for meeting the design-criteria requirements for signage protection. Therefore, this direct final rule does not alter the substantive protection that employers must provide to employees or impose a new compliance burden on employers. Accordingly, OSHA need not, in this rulemaking, determine significant risk or the extent to which this direct final rule will reduce that risk, as typically required by *Industrial Union Department.*

B. Final Economic Analysis and Regulatory Flexibility Act Certification

This direct final rule is not economically significant within the context of Executive Order 12866, or a major rule under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act. In addition, this direct final rule complies with Executive Order 13563. The rulemaking imposes no additional costs on any private-sector or public-sector entity, and does not meet any of the criteria for an economically significant or major rule specified by the Executive Order or relevant statutes.

This rulemaking allows employers increased flexibility in choosing signage for the protection of their employees. This direct final rule, however, does not require an employer to update or replace its signage solely as a result of this rule if the employer's current signage protection meets the revised standards. Because the rule imposes no costs, OSHA certifies that it will not have a significant economic impact on a substantial number of small entities.

C. OMB Review Under the Paperwork Reduction Act of 1995

This rulemaking does not impose new information-collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–30. Accordingly, the Agency does not have to prepare an Information Collection Request in association with this rulemaking.

Members of the public may respond to this paperwork determination by sending their written comments to the Office of Information and Regulatory Affairs, Attn: OSHA Desk Officer (RIN 1218–AC77), Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. The Agency encourages commenters to submit these comments to the rulemaking docket, along with their comments on other parts of this direct final rule. For instructions on submitting these comments and accessing the docket, *see* the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES**. OSHA, however, will not consider any comment received on this paperwork determination to be a ''significant adverse comment'' as specified above under the section titled Direct Final Rulemaking.

To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone (202) 693–2222.

D. Federalism

OSHA reviewed this direct final rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Agencies must limit any such preemption to the extent possible.

Under Section 18 of the OSH Act, 29 U.S.C. 667, Congress expressly provides that states may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards (29 U.S.C. 667); OSHA refers to states that obtain Federal approval for such a plan as ''State-Plan states.'' Occupational safety and health standards developed by State-Plan states must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan states are free to develop and enforce under state law their own requirements for occupational safety and health standards.

While OSHA drafted this direct final rule to protect employees in every state, Section 18(c)(2) of the OSH Act permits State-Plan states and U.S. territories to develop and enforce their own standards for signage protection provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this direct final rule.

In summary, this direct final rule complies with Executive Order 13132. In states without OSHA-approved state plans, this rulemaking limits state policy options in the same manner as other OSHA standards. In State-Plan states, this rulemaking does not significantly limit state policy options because, as explained in the following section, State-Plan states do not have to adopt this direct final rule.

E. State-Plan States

When Federal OSHA promulgates a new standard or amends an existing standard to be more stringent than it was previously, the 27 states or U.S. territories with their own OSHA-approved occupational safety and health plans must revise their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, *e.g.,* because an existing state standard covering this area is at least as effective in protecting workers as the new Federal standard or amendment. 29 CFR 1953.5(a). In this regard, the state standard must be at least as effective as the final Federal rule. State-Plan states must adopt the Federal standard or complete their own standard within six months of the publication date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than the existing standard, State-Plan states need not amend their standards, although OSHA may encourage them to do so. The following 21 states and 1 U.S. territory have OSHA-approved occupational safety and health plans that apply only to private-sector employers: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. In addition, Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply only to state and local government employees.

This direct final rule will not impose any additional or more stringent requirements on employers compared to existing OSHA standards. Through this rulemaking, OSHA is incorporating by reference three recent editions of the applicable national consensus standards in its existing signage protection standards. This direct final rule does not require employers to update or replace their signage solely as a result of this rulemaking if their current signage meets the requirements of this direct final rule. OSHA believes that adding the new references to ANSI Z535.1–2006(R2011), ANSI Z535.2–2011, and ANSI Z535.5–2011, while retaining the current references to ANSI Z35.1–1968, Z35.2–1968, and Z53.1–1967, will impose no additional compliance obligations on employers because employers can continue using their

existing signage and, when necessary, update their signage and not be out of compliance.

Therefore, this direct final rule does not require action under 29 CFR 1953.5(a), and State-Plan states do not need to adopt this rule or show OSHA why such action is unnecessary. However, to the extent these State-Plan states have the same standards as the OSHA standards affected by this direct final rule, OSHA encourages them to adopt the amendments.

F. Unfunded Mandates Reform Act of 1995

OSHA reviewed this direct final rule according to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501–1571, and Executive Order 12875, 58 FR 58093 (1993). 75 FR 48130; 2010. As discussed above in Section IV.B (''Final Economic Analysis and Regulatory Flexibility Certification'') of this preamble, OSHA determined that this direct final rule imposes no additional costs on any private-sector or public-sector entity. Accordingly, this direct final rule requires no additional expenditures by either public or private employers.

As noted above under Section IV.E (''State-Plan States'') of this preamble, OSHA standards do not apply to state or local governments except in states that elected voluntarily to adopt an OSHA-approved state plan. Consequently, this direct final rule does not meet the definition of a ''Federal intergovernmental mandate'' (*see* Section 421(5) of the UMRA, 2 U.S.C. 658(5). Therefore, for the purposes of the UMRA, OSHA certifies that this direct final rule does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than $100 million in any year.

G. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this direct final rule in accordance with Executive Order 13175, 65 FR 67249 (2000), and determined that it does not have ''tribal implications'' as defined in that order. This direct final rule does not have substantial direct effects 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.

H. Consultation With the Advisory Committee on Construction Safety and Health

Under 29 CFR parts 1911 and 1912, OSHA must consult with the Advisory Committee on Construction Safety and Health (''ACCSH'' or ''the Committee''), established pursuant to Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701–3708, in setting standards for construction work. Specifically, § 1911.10(a) requires the Assistant Secretary to provide ACCSH with a draft proposed rule (along with pertinent factual information) and give the Committee an opportunity to submit recommendations. *See, also,* § 1912.3(a) (''[W]henever occupational safety or health standards for construction activities are proposed, the Assistant Secretary [for Occupational Safety and Health] shall consult the Advisory Committee'').

On March 18, 2013, OSHA presented to the ACCSH a draft of the proposed rule accompanying this direct final rule, as well as a table comparing the current regulatory text with the proposed regulatory text for the provisions of 29 CFR 1926.200 subject to this rulemaking. OSHA explained that it was proposing to update these provisions by allowing employers to comply with either the older ANSI standards, Z35.1–1968, Z35.2–1968, and Z53.1–1967, or the latest ANSI standards, Z535.1–006(R2011), Z535.2–2011, and Z535.5–2011. The ACCSH subsequently recommended that OSHA proceed with the proposed rule to update § 1926.200 (a transcript of these proceedings is available at Docket No. OSHA–2013–0005–0007, pp. 41–46). ACCSH members also suggested that OSHA consider replacing the illustrations of the old signs and tags it is removing from § 1926.200(b)(1), (c)(1), and (h)(2) with the new ones, or a combination of the old ones and the new ones. Id. at 21–23. OSHA will consider this suggestion.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, authorized the preparation of this direct final rule. OSHA is issuing this direct final rule pursuant to 29 U.S.C. 653, 655, and 657; 5 U.S.C. 553; 40 U.S.C. 3701–3708; Secretary of Labor's Order 1–2012, 77 FR 3912 (2012); and 29 CFR part 1911.

List of Subjects in 29 CFR Parts 1910 and 1926

Construction, General industry, Incorporation by reference, Occupational safety and health, Safety, Signs, Tags.

Signed at Washington, DC, on June 5, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons stated above in the preamble, the Occupational Safety and Health Administration is amending 29 CFR parts 1910 and 1926 as follows:

PART 1910—[AMENDED]

Subpart A—[Amended]

■ 1. The authority citation for subpart A of part 1910 continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable.

Sections 1910.6, 1910.7, 1910.8 and 1910.9 also issued under 29 CFR 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Public Law 106–113 (113 Stat. 1501A–222); Pub. L. 11–8 and 111–317; and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

■ 2. Amend § 1910.6 as follows:
■ a. Revise paragraphs (e)(59) and (e)(65);
■ b. Redesignate paragraphs (e)(66) through (e)(77) as paragraphs (e)(68) through (e)(79); and
■ c. Add paragraphs (e)(66) and (e)(67).

§ 1910.6 Incorporation by reference.

* * * * *

(e) * * *

(59) ANSI Z35.1–1968, Specifications for Accident Prevention Signs; IBR approved for § 1910.261(c). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1–877–413–5184; Web site: *www.global.ihs.com.*

* * * * *

(65) USAS Z53.1–1967 (also referred to as ANSI Z53.1–1967), Safety Color Code for Marking Physical Hazards, ANSI approved October 9, 1967; IBR approved for § 1910.97(a) and 1910.145(d). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1–877–413–5184; Web site: *www.global.ihs.com.*

(66) ANSI Z535.1–2006(R2011), Safety Colors, reaffirmed July 19, 2011;

IBR approved for §§ 1910.97(a) and 1910.145(d). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209–1762; telephone: 703–525–1695; fax: 703–528–2148; Web site: *www.safetyequipment.org.*

(67) ANSI Z535.2–2011, Environmental and Facility Safety Signs, published September 15, 2011; IBR approved for § 1910.261(c). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209–1762; telephone: 703–525–1695; fax: 703–528–2148; Web site: *www.safetyequipment.org.*

* * * * *

Subpart G—[Amended]

■ 3. Revise the authority citation for subpart G of part 1910 to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 50017), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 4. Amend § 1910.97 by revising paragraph (a)(3)(ii) to read as follows:

§ 1910.97 Nonionizing radiation.

* * * * *

(a) * * *

(3) * * *

(ii) ANSI Z53.1–1967 or ANSI Z535.1–2006(R2011), incorporated by reference in § 1910.6, is for use for color specification. All lettering and the border shall be of aluminum color.

* * * * *

Subpart J—[Amended]

■ 5. Revise the authority citation for subpart J of part 1910 to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

■ 6. Amend § 1910.145 by revising paragraphs (d)(2), (d)(4), and (d)(6) to read as follows:

§ 1910.145 Specifications for accident prevention signs and tags.

* * * * *

(d) * * *

(2) *Danger signs.* The colors red, black, and white shall be those of opaque glossy samples as specified in Table 1, ''Fundamental Specification of Safety Colors for CIE Standard Source 'C,' '' of ANSI Z53.1–1967 or in Table 1, ''Specification of the Safety Colors for CIE Illuminate C and the CIE 1931, 2° Standard Observer,'' of ANSI Z535.1–2006(R2011), incorporated by reference in § 1910.6.

* * * * *

(4) *Caution signs.* The standard color of the background shall be yellow; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1–1967 or Table 1 of ANSI Z535.1–2006(R2011), incorporated by reference in § 1910.6.

* * * * *

(6) *Safety instruction signs.* The standard color of the background shall be white; and the panel, green with white letters. Any letters used against the white background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1–1967 or in Table 1 of ANSI Z535.1–2006(R2011), incorporated by reference in § 1910.6.

* * * * *

Subpart R—[Amended]

■ 7. Revise the authority citation for subpart R of part 1910 to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 5–2007 (72 FR 31159)), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 8. Amend § 1910.261 by revising paragraph (c)(16) to read as follows:

§ 1910.261 Pulp, paper, and paperboard mills.

* * * * *

(c) * * *

(16) *Signs.* When conveyors cross walkways or roadways in the yards, the employer must erect signs reading ''Danger—Overhead Conveyor'' or an equivalent warning, in accordance with ANSI Z35.1–1968 or ANSI Z535.2–2011, incorporated by reference in § 1910.6.

* * * * *

PART 1926—[AMENDED]

Subpart A—[Amended]

■ 9. The authority citation for subpart A of part 1926 continues to read as follows:

Authority: 40 U.S.C. 333; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 10. Amend § 1926.6 as follows:

■ a. Revise paragraph (h)(24);

■ b. Redesignate paragraphs (h)(27) through (h)(30) as (h)(31) through (h)(34) and paragraph (u)(1) as (u)(2);

■ c. Add paragraphs (h)(27) through (h)(30), and (u)(1); and

■ d. Revise newly redesignated paragraph (u)(2).

§ 1926.6 Incorporation by reference.

* * * * *

(h) * * *

(24) ANSI Z35.1–1968, Specifications for Accident Prevention Signs; IBR approved for § 1926.200(b), (c), and 1 (i). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1–877–413–5184; Web site: *www.global.ihs.com.*

* * * * *

(27) USA Z53.1–1967 (also referred to as ANSI Z53.1–1967), Safety Color Code for Marking Physical Hazards, ANSI approved October 9, 1967; IBR approved for § 1926.200(c). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1–877–413–5184; Web site: *www.global.ihs.com.*

(28) ANSI Z535.1–2006(R2011), Safety Colors, reaffirmed July 19, 2011; IBR approved for § 1926.200(c). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209–1762; telephone: 703–525–1695; fax: 703–528–2148; Web site: *www.safetyequipment.org.*

(29) ANSI Z535.2–2011, Environmental and Facility Safety Signs, published September 15, 2011; IBR approved for § 1926.200(b), (c), and (i). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209–1762; telephone: 703–525–1695; fax: 703–528–2148; Web site: *www.safetyequipment.org.*

(30) ANSI Z535.5–2011, Safety Tags and Barricade Tapes (for Temporary Hazards), published September 15, 2011, including Errata, November 14, 2011; IBR approved for § 1926.200(h)

and (i). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209–1762; telephone: 703–525–1695; fax: 703–528–2148; Web site: *www.safetyequipment.org.*

* * * * *

(u) * * *

(1) Manual on Uniform Traffic Control Devices (MUTCD), Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operation, 1988 Edition, Revision 3, September 3, 1993; IBR approved for §§ 1926.200(g), 1926.201(a), and 1926.202. Electronic copies of the MUTCD, 1988 Edition, Revision 3, are available for downloading at *http://www.osha.gov/doc/highway_workzones/mutcd/index.html.*

(2) Manual on Uniform Traffic Control Devices (MUTCD), Millennium Edition, Dec. 2000; IBR approved for §§ 1926.200(g)), 1926.201(a), and 1926.202. Electronic copies of the MUTCD 2000 are available for downloading at *http://mutcd.fhwa.dot.gov/kno-millennium_12.18.00.htm.*

* * * * *

Subpart G—[Amended]

■ 11. Revise the authority citation for subpart G of part 1926 to read as follows:

Authority: 40 U.S.C. 333; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 12. Amend § 1926.200 by revising paragraphs (b)(1), (c)(1), (c)(3), (g)(2), (h)(2), and (i) to read as follows:

§ 1926.200 Accident prevention signs and tags.

* * * * *

(b) *Danger signs.* (1) Danger signs shall be used only where an immediate hazard exists, and shall follow the specifications provided in Figure 1 of ANSI Z35.1–1968 or in Figure 2 of ANSI Z535.2–2011, incorporated by reference in § 1926.6.

* * * * *

(c) *Caution signs.* (1) Caution signs shall be used only to warn against potential hazards or to caution against unsafe practices, and shall follow the specifications provided in Figure 4 of ANSI Z35.1–1968 or in Figure 2 of ANSI Z535.2–2011, incorporated by reference for the sections specified in § 1926.6.

* * * * *

(3) The standard color of the background shall be yellow; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1–1967 or in Table 1 of ANSI Z535.1–2006(R2011), incorporated by reference in § 1926.6.

* * * * *

(g) * * *

(2) All traffic control signs or devices used for protection of construction workers shall conform to Part VI of the MUTCD, 1988 Edition, Revision 3, or Part VI of the MUTCD, Millennium Edition, incorporated by reference in § 1926.6.

(h) * * *

(2) For accident prevention tags, employers shall follow specifications that are similar to those in Figures 1 to 4 of ANSI Z35.2–1968 or Figures 1 to 8 of ANSI Z535.5–2011, incorporated by reference in § 1926.6.

(i) *Additional rules.* ANSI Z35.1–1968, ANSI Z535.2–2011, ANSI Z35.2–1968, and ANSI Z535.5–2011, incorporated by reference in § 1926.6, contain rules in addition to those specifically prescribed in this subpart. The employer shall comply with ANSI Z35.1–1968 or ANSI Z535.2–2011, and ANSI Z35.2–1968 or Z535.5–2011, with respect to such additional rules.

■ 13. Amend § 1926.201 by revising paragraph (a) to read as follows:

§ 1926.201 Signaling.

(a) *Flaggers.* Signaling by flaggers and the use of flaggers, including warning garments worn by flaggers, shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3, or the Millennium Edition), incorporated by reference in § 1926.6.

* * * * *

■ 14. Revise § 1926.202 to read as follows:

§ 1926.202 Barricades.

Barricades for protection of employees shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3, or the Millennium Edition), incorporated by reference in § 1926.6.

[FR Doc. 2013–13909 Filed 6–12–13; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0376]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Mile Marker 219 to Mile Marker 229, in the Vicinity of Port Allen Lock

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River beginning at mile marker 219 and ending at mile marker 229, extending the entire width of the river, in the vicinity of Port Allen Lock. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with high water. Entry into this zone is prohibited unless vessels have met the specified instructions or specifically authorized by the Captain of the Port, New Orleans or a designated representative.

DATES: This rule will be enforced with actual notice from 12 p.m. on May 5, 2013, until June 13, 2013. This rule is effective in the Code of Federal Regulations on June 13, 2013 until 12 p.m. on June 16, 2013.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2013–0376. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this rulemaking. 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Christopher Norton, Coast Guard Marine Safety Unit Baton Rouge; telephone (225) 298–5400, email *Christopher.R.Norton@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is necessary to ensure the safe operation of vessels on the river during this period of elevated water levels. The water levels on the Lower Mississippi River in this area have risen very rapidly, creating a faster than normal current that is a hazard to the safe operation of vessels in the area. Publishing an NPRM would be impracticable because it would unnecessarily delay the immediate action needed to protect persons and vessels from the potential safety hazards associated with high water.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. As discussed above, a safety zone is immediately needed to protect the public from hazards associated with flooding caused by the elevated water levels. Therefore, publishing a NPRM and delaying its effective date would be impracticable and contrary to the public interest.

B. Basis and Purpose

The Baton Rouge gauge has reached 33 feet and continues to rise. This elevated water level is creating a faster than usual current in the area of the Lower Mississippi River, therefore the Captain of the Port, New Orleans has implemented a safety zone from mile marker 219 to mile marker 225, Lower Mississippi River (LMR). This safety zone prohibits certain commercial vessels from operating in this area, unless they are in compliance with specific operational directions of the Captain of the Port, New Orleans.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River beginning at mile marker 219 and ending at mile marker 229, extending the entire width of the river, in the vicinity of Port Allen Lock. Commercial vessels are prohibited from entering into this safety zone unless they comply with the following directions of the Captain of the Port, New Orleans: Canal towing companies and tow operators with tows 600 feet in length or greater, excluding the length of the towing vessel, are required to use private assist vessels with a minimum of 1000 horse power when entering and exiting the Port Allen Locks. Tows exiting the Port Allen Locks intending to head northbound shall initially proceed southbound and then top around at or below mile marker 226 prior to heading north. Additionally, the Captain of the Port, New Orleans is recommending a tonnage restriction of 1 horse power per 5 ton or 280 horse power per regulation barge, while empty barges may be calculated at ½ the horse power requirement. Commercial vessels that are not in compliance with the above directions may request special authorization to enter into or transit through the safety zone from the Captain of the Port, New Orleans.

This rule is effective from 12 p.m. on May 5, 2013, until 12 p.m. on June 16, 2013, unless cancelled earlier by the Captain of the Port, New Orleans. The Captain of the Port, New Orleans may cancel this safety zone in the event the Baton Rouge Gage is reading below 33 feet and falling. The Captain of the Port, New Orleans or a designated representative will inform the public through Broadcast Notice to Mariners of changes in the effective period and enforcement times for the safety zone.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule will be in effect for a limited time period and notifications to the marine community will be made by local notice to mariners, and subsequent notifications through broadcast notice to mariners. Deviation from the rule may be requested and will be considered on a case-by-case basis by the Captain of the Port, New Orleans or a designated representative. Most vessels will be able to transit through the zone, therefore the impacts on routine navigation are expected to be minimal, and this rule is not a significant regulatory action.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of certain commercial vessels intending to transit the Lower Mississippi River between mile marker 219 and mile marker 229. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time, and these commercial vessels may transit freely though the zone if they are operating in compliance with the Captain of the Port, New Orleans' direction. If you are a small business entity with a concern about this temporary final rule, contact LT Christopher Norton, Marine Safety Unit Baton Rouge, at (225) 298–5400 or *Christopher.R.Norton@uscg.mil.*

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

This 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.

10. Protection of Children

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

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone as a result of elevated water levels on the Lower Mississippi River at mile marker 219 to mile marker 229 in the vicinity of Port Allen Lock. This rule is categorically excluded from further review under paragraph 34(g) of figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0376 to read as follows:

§ 165.T08–0376 Safety Zone; Lower Mississippi River, Mile Marker 219 to Mile Marker 229, in the vicinity of Port Allen Lock.

(a) *Location.* The following area is a safety zone: All waters of the Lower Mississippi River beginning at mile marker 219 and ending at mile marker 229, extending the entire width of the river, in the vicinity of Port Allen Lock.

(b) *Effective date.* This section is effective from 12 p.m. local on May 5, 2013, until 12 p.m. local on June 16, 2013, unless cancelled earlier by the Captain of the Port, New Orleans.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, commercial towing vessels are prohibited from entering into this safety zone unless operating in compliance with the Captain of the Port, New Orleans' direction below, or unless specifically authorized by the Captain of the Port, New Orleans or designated representative. The Captain of the Port, New Orleans may be contacted via telephone at (225) 281–4785. A designated representative may include commissioned, warrant, and petty officers of the U.S. Coast Guard on scene within the safety zone area.

(2) Commercial towing vessels requiring entry into or passage through this safety zone must comply with the Captain of the Port, New Orleans' following directions: Canal towing companies and tow operators with tows

600 feet in length or greater, excluding the length of the towing vessel, are required to use private assist vessels with a minimum of 1000 horse power when entering and exiting the Port Allen Locks. Tows exiting the Port Allen Locks intending to head northbound shall initially proceed southbound and then top around at or below mile marker 226 prior to heading north. Additionally, the Captain of the Port, New Orleans is recommending a tonnage restriction of 1 horse power per 5 ton or 280 horse power per regulation barge, while empty barges may be calculated at ½ the horse power requirement.

(3) Commercial towing vessels that are not in compliance with the above direction may request special authorization from the Captain of the Port, New Orleans to enter or transit through the safety zone. Any vessel granted special authorization must comply with any specific additional restrictions imposed by the Captain of the Port, New Orleans.

(d) *Informational Broadcasts.* The Captain of the Port, New Orleans or a designated representative will inform the public through broadcast notices to mariners (BNM) of any changes in the effective period or size of the safety zone.

Dated: May 5, 2013.

P.W. Gautier,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 2013–14073 Filed 6–12–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[LLOR957000–L63100000–HD0000]

RIN 1004–AE31

Application Procedures, Execution and Filing of Forms: Correction of State Office Address for Filings and Recordings, Including Proper Offices for Recording of Mining Claims; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Administrative final rule.

SUMMARY: This administrative final rule amends the regulations pertaining to execution and filing of forms in order to reflect the new address of the Oregon/Washington State Office of the Bureau of Land Management (BLM), which will move on August 5, 2013. All filings and other documents relating to public lands in the States of Oregon and Washington must be filed at the new address of the State Office.

DATES: This rule is effective August 5, 2013.

ADDRESSES: You may send inquiries or suggestions to Deputy State Director, Management Services (950), Bureau of Land Management, P.O. Box 2965, Portland, OR 97208.

FOR FURTHER INFORMATION CONTACT: Pat Russell, 503–808–6603. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week, to leave a message for Ms. Russell.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Matters

I. Background

This administrative final rule reflects the administrative action of changing the street address of the Oregon/Washington State Office of the BLM. Both the postal mailing address (P.O. Box 2965, Portland, OR 97208) and the phone number (503–808–6001) remain the same. This rule changes the street address for the personal filing of documents relating to public lands in Oregon and Washington, but makes no other changes in filing requirements. The BLM has determined that the rule has no substantive impact on the public, imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public. The Department of the Interior, therefore, for good cause finds that under 5 U.S.C. 553 (b)(B) and 553 (d)(3) notice and public comment procedures are unnecessary and that the rule may take effect on the date of the move, August 5, 2013.

II. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This administrative final rule is an administrative action to change the address for one BLM State Office. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. The rule imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public.

National Environmental Policy Act

The BLM has found that the administrative final rule is of a procedural nature and thus is categorically excluded from environmental review under Section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), pursuant to 43 CFR 46.210(i). In addition, the administrative final rule does not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental regulations, policies, and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. This administrative final rule is a purely administrative regulatory action having no effect upon the public or the environment and it has been determined that the rule will not have a significant effect on the economy or small entities.

Small Business Regulatory Enforcement Fairness Act

This administrative final rule is a purely administrative regulatory action having no effects upon the public or the economy. This is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). The rule will not have an annual effect on the economy of $100 million or more. The rule will not cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to complete with foreign-based enterprises.

Unfunded Mandate Reform Act

The BLM has determined that this administrative final rule is not significant under the Unfunded Mandates Reform Act of 1995 because the rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more

in any one year. Further, the administrative final rule will not significantly or uniquely affect small governments. It does not require action by any non-Federal government entity. Therefore, the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et. seq.*), is not required.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights would be affected by a rule that merely reports an address change for the Oregon/Washington State Office. The Department therefore certifies that this administrative final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the BLM finds that the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

The administrative final rule does not have substantial direct effects on the States, on the relationship between the national governments and the States, or the distribution of power and the responsibilities among the various levels of government. This administrative final rule does not preempt State law.

Executive Order 12988, Civil Justice Reform

This administrative final rule is a purely administrative regulatory action having no effects upon the public and will not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with the Executive Order 13175, the BLM finds that the rule does not include policies that have tribal implications. This administrative final rule is purely an administrative action having no effects upon the public or the environment, imposing no costs, and merely updating the BLM, Oregon/Washington State Office address included in the Code of Federal Regulations.

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

In accordance with Executive Order 13211, the BLM has determined that the administrative final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This administrative final rule is a purely administrative action and has no implications under Executive Order 13211.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Archives and records, Public lands.

Dated: June 4, 2013.

Tommy P. Beaudreau,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons discussed in the preamble, the Bureau of Land Management amends 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

■ 1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

■ 2. Amend § 1821.10 in paragraph (a) by removing the entry for Oregon and adding in its place an entry for Oregon/Washington to read as follows:

§ 1821.10 Where are BLM offices located?

(a) * * *

STATE OFFICES AND AREAS OF JURISDICTION

* * * * *

Oregon/Washington State Office, 1220 SW. 3rd Avenue, Portland, Oregon 97204, P.O. Box 2965, Portland, Oregon 97208—Oregon and Washington.

* * * * *

[FR Doc. 2013–14033 Filed 6–12–13; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120919470–3513–02]

RIN 0648–BC58

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 9

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

ACTION: Notification of final action; revision to Fishery Management Plan.

SUMMARY: NMFS issues this final rule to implement Amendment 9 (Amendment 9) to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule revises the criteria and procedures by which a South Atlantic state may request a concurrent closure of the exclusive economic zone (EEZ) to the commercial harvest of penaeid shrimp (brown, pink, and white shrimp) when state waters close as a result of severe winter weather. Amendment 9 also revises the overfished and overfishing status determination criteria for pink shrimp. The purpose of this rule is to increase the flexibility and timeliness of the criteria and process for implementing a concurrent closure of penaeid shrimp harvest in the EEZ to maximize protection of overwintering white shrimp in the South Atlantic.

DATES: This rule is effective July 15, 2013.

ADDRESSES: Electronic copies of Amendment 9, which includes an environmental assessment, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727–824–5305, or email: *kate.michie@noaa.gov.*

SUPPLEMENTARY INFORMATION: The penaeid shrimp fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On March 4, 2013, NMFS published a notice of availability for Amendment 9 and requested public comment (78 FR

14069). On March 20, 2013, NMFS published a proposed rule for Amendment 9 and requested public comment (78 FR 17178). The proposed rule and Amendment 9 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

The management measures contained in Amendment 9 and this final rule do not require any changes to the current regulatory text within § 622.206(a), ''South Atlantic shrimp cold weather closure.'' This is because the current regulations refer to the FMP for the specific criteria and procedures required to implement a concurrent closure of the EEZ for penaeid shrimp. This final rule revises those criteria and procedures within the FMP; however, the regulatory text does not change.

Criteria Used to Trigger a State's Ability To Request a Concurrent Closure of the EEZ to Penaeid Shrimp Commercial Harvest

This final rule revises the criteria that a state must meet to request from NMFS a closure of commercial penaeid shrimp harvest in Federal waters following severe winter weather and a closure of state waters. Currently, a state must demonstrate at least an 80-percent reduction in the population of overwintering white shrimp in order to justify a closure. This rule requires that a state must demonstrate either at least an 80-percent reduction in the population of overwintering white shrimp, or that state water temperatures were 9 °C (48 °F) or less, for at least 7 consecutive days. These revised criteria provide increased flexibility for a state to protect the overwintering white shrimp in adjacent EEZ waters.

Process for a State To Request a Concurrent Closure of the EEZ To Penaeid Shrimp Commercial Harvest

This final rule revises the procedures for a state to request a closure of the penaeid shrimp commercial sector in the EEZ concurrent with a closure of its state waters. The revised procedures allow a state, after determining that the revised concurrent closure criteria have been met, to submit a letter directly to the NMFS Regional Administrator (RA) with the request and supporting data for a concurrent closure of penaeid shrimp harvest in the EEZ adjacent to the closed state waters. After a review of the request and supporting information, if the RA determines the recommended closure is in accordance with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, NMFS would implement the closure through a notification in the **Federal Register**. These revised procedures reduce the administrative burden to the states and the Council through their more efficient process.

Additional Management Measure Contained in Amendment 9

Amendment 9 also revises the overfished and overfishing status determination criteria (biomass at the maximum sustainable yield (B_{MSY})) for the pink shrimp stock. The B_{MSY} proxy is revised based on more recent Southeast Area Monitoring and Assessment Program (SEAMAP) harvest data for pink shrimp. Specifically, Amendment 9 revises the B_{MSY} proxy for pink shrimp using the lowest catch per unit effort (CPUE) value from SEAMAP during the period 1990–2011 (0.089 individuals per hectare). The Council and NMFS determined that the pink shrimp stock size that produced the relatively low CPUE value of 0.089 individuals per hectare does not compromise the long-term capacity of the pink shrimp stock to achieve MSY, because the low stock size has historically produced a biomass the following year that is capable of achieving MSY, based on the best available science.

Comments and Responses

NMFS received two comment submissions on Amendment 9 and the proposed rule. One letter was from an individual that expressed support for Amendment 9 and the proposed rule and the other submission was from a Federal agency stating that they had no comments on Amendment 9 or the proposed rule. No other comments were received. NMFS agrees with the individual commenter that this amendment will help protect overwintering white shrimp.

Changes From the Proposed Rule

On April 17, 2013, NMFS published in the **Federal Register** an interim final rule to reorganize the regulations in 50 CFR part 622 for the Gulf of Mexico, South Atlantic, and the Caribbean (78 FR 22950). That interim final rule did not create any new rights or obligations; it reorganized the existing regulatory requirements in the Code of Federal Regulations into a new format. This final rule incorporates this new format but does not change the specific regulatory measures that were discussed in the proposed rule. As a result of this reorganization, the shrimp cold weather closure regulatory text previously located at § 622.35(d) is now located at § 622.206(a).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary to more efficiently manage the penaeid shrimp resource, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. No duplicative, overlapping, or conflicting Federal rules have been identified. This final rule would not establish any new reporting or record-keeping requirements.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: June 4, 2013.

Alan D. Risenhoover,

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

[FR Doc. 2013–13692 Filed 6–12–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3148–02]

RIN 0648–XC722

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Bering Sea and Aleutian Islands

Management Area (BSAI). This action is necessary to fully use the 2013 total allowable catch (TAC) of northern rockfish in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 7, 2013, through 2400 hrs, A.l.t., December 31, 2013. Comments must be received at the following address no later than 4:30 p.m., A.l.t., June 24, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0210, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0210,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

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

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

Pursuant to the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013), NMFS closed the directed fishery for northern rockfish under § 679.2(d)(1)(iii).

As of June 6, 2013, NMFS has determined that approximately 2,767 metric tons of northern rockfish remain unharvested in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the 2013 TAC of northern rockfish in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the BSAI. This will enhance the socioeconomic well-being of harvesters in this area. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of northern rockfish in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of northern rockfish in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 6, 2013.

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

Without this inseason adjustment, NMFS could not allow the fishery for northern rockfish in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until June 24, 2013.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

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

Dated: June 7, 2013.

James P. Burgess,

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

[FR Doc. 2013–13990 Filed 6–7–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 78, No. 114

Thursday, June 13, 2013

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0397; Directorate Identifier 2013–NE–15–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG (RRD) model Tay 650–15 turbofan engines. This proposed AD was prompted by excessive deterioration of the high-pressure (HP) air bleed valve operating mechanism. This proposed AD would require a one-time inspection of the HP air bleed valve operating mechanism and, depending on findings, corrective action. We are proposing this AD to prevent multiple fan blade failure, which could result in uncontained engine failure and damage to the airplane.

DATES: We must receive comments on this proposed AD by August 12, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this proposed AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1944; fax: 49 0 33–7086–3276. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: 800–647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0397; Directorate Identifier 2013–NE–15–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0086, dated April 9, 2013, to correct an unsafe condition for the specified products. That mandatory continuing airworthiness information (MCAI) states:

> A review of the service history of Tay engines discovered that the High Pressure (HP) air bleed valve operating mechanism could be a subject of excessive deterioration, influencing the aerodynamics and stability of the Low Pressure (LP) compressor (fan) rotor.
>
> This condition, if not corrected, could reduce fan flutter margin and, in some cases, could lead to multiple fan blade failures, possibly resulting in an uncontained release of high energy debris with consequent damage to, and/or reduced control of, the aeroplane.

We are proposing this AD to prevent multiple fan blade failure, which could result in uncontained engine failure and damage to the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

RRD has issued Alert Non-Modification Service Bulletin (NMSB) No. TAY–75–A1784, dated February 14, 2013. The NMSB describes procedures for inspection of the HP air bleed valve operating mechanism and corrective action, if necessary.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Germany and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other

products of the same type design. This proposed AD would require a one-time inspection of the HP air bleed valve operating mechanism and, depending on findings, corrective action.

Costs of Compliance

We estimate that this proposed AD affects 52 Tay turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 10 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Required parts cost about $153 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $52,156.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines (formerly Rolls-Royce plc): Docket No. FAA–2013–0397; Directorate Identifier 2013–NE–15–AD.

(a) Comments Due Date

We must receive comments by August 12, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce Deutschland Ltd & Co KG (RRD) model Tay 650–15 turbofan engines.

(d) Reason

This AD was prompted by excessive deterioration of the high-pressure (HP) air bleed valve operating mechanism which affects the aerodynamic flutter margin, causing subsequent multiple fan blade failure. We are issuing this AD to prevent multiple fan blade failure, which could result in uncontained engine failure and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following actions.

(1) Within 1,500 flight cycles after the effective date of this AD, perform a one-time inspection of the HP air bleed valve operating mechanism. Use paragraphs 3.D. and 3.E. of RRD Alert Non-Modification Service Bulletin (NMSB) No. TAY–75–A1784, dated February 14, 2013, to do your inspection.

(2) If the measured torque necessary to open and close the HP air bleed valve is higher than the torque values referenced in paragraph 3.D.(1)(a) of RRD Alert NMSB No. TAY–75–A1784, dated February 14, 2013, then before next flight, accomplish paragraph 3.E. of RRD Alert NMSB No. TAY–75–A1784, dated February 14, 2013.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(g) Related Information

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov*.

(2) Refer to European Aviation Safety Agency Airworthiness Directive 2013–0086, dated April 9, 2013, and RRD Alert NMSB No. TAY–75–A1784, dated February 14, 2013, for related information.

(3) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1944; fax: 49 0 33–7086–3276. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on June 6, 2013.

Colleen M. D'Alessandro,

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

[FR Doc. 2013–14034 Filed 6–12–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 718 and 725

RIN 1240–AA07

Black Lung Benefits Act: Standards for Chest Radiographs

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: Physicians and adjudicators use chest radiographs (X-rays) as a tool in evaluating whether a coal miner suffers from pneumoconiosis (black lung disease). Accordingly, the Department's regulations implementing the Black Lung Benefits Act allow the submission of radiographs in connection with benefit claims and set out quality standards for their performance. These standards are currently limited to film radiographs. In recent years, many medical facilities have phased out film radiography in

favor of digital radiography. This proposed rule would update the existing film-radiograph standards and provide parallel standards for digital radiographs. The proposed rule would also update outdated terminology and remove certain obsolete provisions.

DATES: Comments on this proposed rule must be received by midnight Eastern Standard Time on August 12, 2013.

ADDRESSES: You may submit written comments, identified by RIN number 1240–AA07, by any of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments. To facilitate receipt and processing of comments, OWCP encourages interested parties to submit their comments electronically.
- *Fax:* (202) 693–1395 (this is not a toll-free number). Only comments of ten or fewer pages, including a Fax cover sheet and attachments, if any, will be accepted by Fax.
- *Regular Mail:* Division of Coal Mine Workers' Compensation Programs, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–3520, 200 Constitution Avenue NW., Washington, DC 20210. The Department's receipt of U.S. mail may be significantly delayed due to security procedures. You must take this into consideration when preparing to meet the deadline for submitting comments.
- *Hand Delivery/Courier:* Division of Coal Mine Workers' Compensation Programs, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–3520, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Breeskin, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW., Suite N–3464, Washington, DC 20210. Telephone: (202) 693–0824 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–800–877–8339 for further information.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule Published Concurrently With Companion Direct Final Rule

In the Final Rules section of this **Federal Register** edition, OWCP is simultaneously publishing an identical rule as a ''direct final'' rule. In direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. The agency concurrently publishes an identical proposed rule. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

OWCP has determined that this rule, which primarily adopts quality standards for administering and interpreting digital radiographs, is suitable for direct final rulemaking. The standards adopted by this rule are largely based on those the Department of Health and Human Services recently promulgated for use in the National Institute for Occupational Safety and Health (NIOSH) Coal Workers' Health Surveillance Program (CWHSP) (the NIOSH rules). Those standards were subject to full notice-and-comment rulemaking. The NIOSH proposal informed the public that the standards might also be used by the Department of Labor in the Black Lung Benefits Act (BLBA) context, and OWCP alerted the BLBA employer and claimant communities to the NIOSH proposed rule. NIOSH addressed all significant comments when it promulgated its final rule. OWCP's rule also does not impose any new requirements on the parties in BLBA claims; instead, it merely provides the parties another option for developing medical evidence in claim proceedings. Thus, OWCP does not expect to receive significant adverse comment on this rule. Simultaneously publishing a companion direct final rule will expedite the rulemaking process to give parties the option of using digital radiographs as soon as possible.

By simultaneously publishing this proposed rule, notice-and-comment rulemaking will be expedited if OWCP receives significant adverse comment and withdraws the direct final rule. The proposed and direct final rules are substantively identical, and their respective comment periods run concurrently. OWCP will treat comments received on the proposed rule as comments regarding the companion direct final rule and vice versa. Thus, if OWCP receives a significant adverse comment on either this proposed rule or the companion direct final rule, OWCP will publish a **Federal Register** notice withdrawing the direct final rule and proceed with this proposed rule.

For purposes of the direct final rule, a significant adverse comment is one that explains: (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, OWCP will consider whether the comment raises an issue serious enough to warrant a substantive response if it had been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how the direct final rule would be ineffective without the addition.

OWCP requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community. All interested parties should comment at this time because OWCP will not initiate an additional comment period on this proposed rule even if it withdraws the direct final rule.

II. Background of This Rulemaking

The BLBA, 30 U.S.C. 901–944, provides for the payment of benefits to coal miners and certain of their dependent survivors on account of total disability or death due to coal workers' pneumoconiosis. 30 U.S.C. 901(a); *Usery* v. *Turner Elkhorn Mining Co.,* 428 U.S. 1, 5 (1976). Benefits are paid by either an individual coal mine operator that employed the coal miner (or its insurance carrier), or the Black Lung Disability Trust Fund. *Director, OWCP* v. *Bivens,* 757 F.2d 781, 783 (6th Cir. 1985). The primary purpose of this proposed rulemaking is to update the quality standards applicable to chest radiographs (X-rays) used in diagnosing the existence of pneumoconiosis by implementing new standards for digital radiographs. The Department also proposes updating certain terminology and removing an obsolete provision as explained in the section-by-section analysis below.

From the black lung program's inception, physicians and adjudicators

have used chest X-rays as one tool in evaluating a miner's health. Recognizing their importance to claim adjudications, Congress has granted the Secretary of Labor explicit authority to, ''by regulation, establish specific requirements for the techniques used to take [chest X-rays]'' to ensure adequate and uniform X-ray quality. 30 U.S.C. 923(b). The BLBA also generally authorizes the Secretary of Labor, in consultation with NIOSH, to ''establish criteria for all appropriate medical tests'' administered in connection with benefit claims. 30 U.S.C. 902(f)(1)(D).

Based on these directives, the Department promulgated quality standards for administering and interpreting chest X-rays in 1980. *See* 45 FR 13678, 13680–81 (February 29, 1980). Codified at 20 CFR 718.102, 718.202, and Appendix A to Part 718, these standards were drawn largely from those adopted by NIOSH for what is now known as the Coal Workers' Health Surveillance Program (CWHSP). The CWHSP, mandated by the Coal Mine Health and Safety Act, was developed to detect coal workers' pneumoconiosis and prevent disease progression in individual miners, while at the same time providing information for evaluation of temporal and geographic trends in pneumoconiosis. 30 U.S.C. 843. To inform each miner of his or her health status, the CWHSP requires that underground coal mine operators offer new workers a chest X-ray through an approved facility as soon as possible after employment starts, another one three years later, and additional X-rays at periodic intervals thereafter. CWHSP chest X-rays must be administered and read in accordance with NIOSH's specifications. 30 U.S.C. 843(a). NIOSH set out these specifications—which included standards for administering, interpreting, classifying and submitting chest radiographs—for film-based radiography systems in regulations at 42 CFR part 37.

The Department modeled its 1980 BLBA chest X-ray quality standards on NIOSH's then-current regulations, which HHS had published on August 1, 1978. 43 FR 33713 (August 1, 1978). In consultation with NIOSH, the Department adopted (with minor revisions) those NIOSH rules that were relevant to ensuring that quality X-ray films would be submitted in BLBA claims. *See generally* 45 FR 13680–81 (February 29, 1980). Although NIOSH later revised two of the 42 CFR part 37 regulations the Department had adopted, 52 FR 7866–01 (March 13, 1987), the Department did not make similar changes to the BLBA quality standards. Nor did the Department revise the technical requirements (including those in Appendix A) when it amended other facets of §§ 718.102 and 718.202 in 1983 and 2000. *See* 48 FR 24273–74 (May 31, 1983); 65 FR 79929, 79945–46 (December 20, 2000). Thus, the Department's current technical quality standards for chest X-rays have not been changed since 1980.

In the past decade, digital radiography systems have been rapidly replacing traditional analog film-based systems. Claimants, coal mine operators, and the Department have been experiencing increasing difficulty in obtaining film chest X-rays—the only type the BLBA quality standards address—for miners. Interpretations of digital X-rays are admissible as ''other medical evidence'' under the catch-all provision at 20 CFR 718.107, but only if the interpretation's proponent establishes to the adjudicator's satisfaction that digital X-rays are medically acceptable and relevant to the claimant's entitlement to benefits. *See generally Webber* v. *Peabody Coal Co.,* 23 BLR 1–123 (2006) (*en banc*); *Harris* v. *Old Ben Coal Co.,* 23 BLR 1–98 (2006) (*en banc*), *aff'd on recon.,* 24 BLR 1–13 (2007) (*en banc*). This has led to mixed results from adjudicators, with some admitting digitally based interpretations and others refusing to consider them or affording them less weight based on the technology employed.

Recognizing the overarching technological shift from film to digital radiography systems, NIOSH recently promulgated new standards for administering, interpreting, classifying and submitting digital chest radiographs for the CWHSP. 77 FR 56718–56735 (September 13, 2012) (final rule). *See also* 77 FR 1360–1385 (January 9, 2012) (proposed rule). NIOSH adopted these rules only after fully investigating the validity of using digital chest X-rays for diagnosing pneumoconiosis and full notice-and-comment proceedings that allowed the public to participate. The NIOSH rules also retained the standards for film-based radiography systems with minor terminology modifications.

This proposed rule retains the current regulatory quality standards for film-based chest X-rays (with the minor modifications explained in the section-by-section analysis below) and adds parallel quality standards for digitally acquired chest radiographs. As it did when it first promulgated quality standards for film-based chest X-rays, the Department has derived its digital-radiography standards from those adopted by NIOSH for the CWHSP. The Department believes this is appropriate because Congress designated NIOSH as its statutory advisor for establishing standards for BLBA medical testing. These standards will ensure that claim adjudications continue to be based on high-quality, uniform radiographs. By adopting quality standards for digitally acquired chest X-rays, the Department intends that interpretations of film and digital X-rays—so long as they are made and interpreted in accordance with the applicable quality standards—will be put on equal footing both for admission into evidence and for the weight accorded them. The Department believes that claimants, coal mine operators, and the BLBA program itself will benefit in a variety of ways from these new rules. The additional benefits are outlined in more detail below.

III. Statutory Authority

Section 426(a) of the BLBA, 30 U.S.C. 936(a), authorizes the Secretary of Labor to prescribe all rules and regulations necessary for the administration and enforcement of the Act. The BLBA also authorizes the Secretary of Labor, in consultation with NIOSH, to ''establish criteria for all appropriate medical tests'' administered in connection with a benefits claim, 30 U.S.C. 902(f)(1)(D), and to ''establish specific requirements for the techniques used to take [X-rays] of the chest'' to ensure their quality. 30 U.S.C. 923(b).

IV. Section-by-Section Explanation

Updated Terminology

The Department proposes two changes throughout the regulatory sections and Appendix that this rule revises. First, the Department has replaced the outdated term ''roentgenogram'' with the term ''radiograph,'' which is currently used in the medical community. *See, e.g.,* § 725.406(a).

Second, the Department has replaced the term ''shall.'' Executive Order 13563 states that regulations must be ''accessible, consistent, written in plain language, and easy to understand.'' 76 FR 3821 (January 21, 2011). *See also* E.O. 12866, 58 FR 51735 (October 4, 1993) (''Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.''). To that end, the Department has replaced the imprecise term ''shall'' in those sections and the Appendix it is amending with ''must'' for obligations imposed and ''must not'' for prohibitions. *See generally* Federal Plain Language Guidelines, *http://www.plainlanguage.gov/howto/guidelines;* Black's Law Dictionary 1499 (9th ed. 2009) (''shall'' can be read

either as permissive or mandatory). These revisions required minor additional language changes in § 718.202(a)(2), (b), and (c). No change in meaning is intended.

20 CFR 718.5 Incorporations by Reference

This proposed section is new. It is added to comply with the Office of the Federal Register's rules on incorporation by reference. If any material is incorporated by reference in the final rule, OWCP will ask the Director of the Federal Register to approve the Department's incorporation of the materials. This section also explains how the public may obtain copies of the incorporated materials.

20 CFR 718.102 Chest Radiographs (X-Rays)

The Department proposes substantially revising § 718.102 to allow parties the option of submitting X-rays that are produced either by film or digital radiography systems, and to otherwise update the rule. Because these changes would require reorganization of the regulation, the Department would publish the new regulation in its entirety. The proposed revisions to each subsection of the regulation are described below.

Subsection (a) is retained and remains substantively unchanged.

Subsection (b) is new. It specifically allows for the submission of X-rays produced by either film or digital radiography systems as those systems are defined in Appendix A. Current subsection (b) has been amended and re-designated subsection (d).

Subsection (c) is new. In accordance with the NIOSH standards, subsection (c) bans the use of X-rays that have been converted from film to digital, or vice-versa. NIOSH found that these approaches do not assure similar performance to that obtained from film under the existing standards. *See* 77 FR 1366 (January 9, 2012). Current subsection (c) has been amended and re-designated subsection (e).

Subsection (d) establishes the standards for classifying both film and digital radiographs. The regulation continues to direct that classifications be made in accordance with the International Labour Organization's (ILO) classification system. For film X-rays, subsection (d)(1) lists the 1980, 2000, and 2011 editions of the ILO Guidelines. The Department has included these three editions to clarify that film X-rays acquired prior to the issuance of this regulation and interpreted under the earlier editions continue to meet the quality standards. Radiographs acquired and interpreted after implementation of this rule should be classified in accordance with the 2011 Guidelines. For digitally acquired X-rays, subsection (d)(2) requires classification using the ILO's 2011 Guidelines. The 2011 edition is the first one in which the ILO authorized the use of its classification system for digital images and developed a set of standard digital image files for use during classification. A party who wishes to introduce digital X-ray interpretations that pre-date issuance of the ILO 2011 Guidelines may still do so under the 20 CFR 718.107 ''other medical evidence'' standard. Subsection (d)(3) retains the provision that any X-ray classified as category 0 does not constitute evidence of clinical pneumoconiosis, whether acquired by film or digital systems. Finally, the Department has removed references to various classification systems published in 1958, 1968, and 1971 because they are obsolete.

Subsection (e) retains the current requirement that X-ray reports must include the name and qualifications of the medical provider who took the X-ray; the name and qualifications of the physician who interpreted it, including whether the physician is a Board-certified or Board-eligible radiologist or a Certified B Reader; the ILO classification; and a compliance statement. Definitions for Board-certified radiologist, Board-eligible radiologist, and Certified B Reader have been moved to subsection (e)(2) from their current location in 20 CFR 718.202(a)(1)(ii). The Department also updated the Certified B Reader definition by eliminating a reference to the Appalachian Laboratory for Occupational Safety and Health and adding a provision that the physician's certification must be maintained through the date he or she interprets the radiograph.

Subsection (f) is largely new. It describes the protocol for submitting film and digital X-rays to OWCP. The film protocol currently set forth under subsection (d) remains unchanged. The Department has added a protocol for submitting digital X-rays that requires parties to submit the data on DVD or other media OWCP specifies in a format that meets the standards set forth in Appendix A, paragraph (d). These standards preclude compression of the data unless the compression is lossless. *See* Appendix A, paragraph (d)(7)(v).

Subsection (g) allows an interpretation of a chest X-ray to be submitted even in the absence of the underlying X-ray film or digital data file where the miner is deceased and the film or data upon which the report is based has been lost or destroyed. This provision, currently set forth in subsection (d), remains unchanged.

Subsection (h) provides a rebuttable presumption that the technical requirements found in Appendix A have been met. This provision, currently set forth in subsection (e), remains unchanged except that the cross-reference to 20 CFR 718.202 for the definitions of Board-certified radiologist, Board-eligible radiologist, and Certified B Reader has been removed.

20 CFR 718.202 Determining the Existence of Pneumoconiosis

In addition to moving the definitions for radiology qualifications to § 718.102 (*see* explanation at § 718.102), the Department proposes revising this regulation to eliminate outdated material. The Department has deleted subsections (a)(1)(i) and (ii), which implement the BLBA's X-ray rereading prohibition that applies only to claims filed before January 1, 1982. *See* 30 U.S.C. 923(b). Similarly, the Department has eliminated the phrase ''filed on or after January 1, 1982'' in the second sentence of subsection (c), which implements the BLBA's limitations on using lay evidence to prove pneumoconiosis, and reordered that provision for clarity. Few, if any, claims filed prior to January 1, 1982 remain in litigation. Thus, it is no longer necessary to publish the criteria governing these claims or to draw distinctions based on that date. If any claim filed before January 1, 1982 results in litigation after the effective date of these regulations, and the X-ray rereading prohibition or the lay testimony provision is at issue, the version of § 718.202(a)(1)(i), (a)(ii), and (c) as reflected in the 2011 edition of the Code of Federal Regulations will continue to apply.

20 CFR 718.304 Irrebuttable Presumption of Total Disability or Death Due to Pneumoconiosis

The Department proposes revising this rule to update the references to the ILO classification system. Current subsections (a)(1), (a)(2), and (a)(3) set forth several outdated classification systems that could be used to diagnose complicated pneumoconiosis. The Department has eliminated these provisions and added a phrase to the end of subsection (a) that cross-references § 718.102(d): ''in accordance with the classification system established in Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses provided in § 718.102(d).'' As explained above, proposed § 718.102(d) sets out

the ILO classification systems that must be used when interpreting film and digital chest X-rays. This revision streamlines § 718.304 and makes it consistent with § 718.102(d).

Appendix A to Part 718—Standards for Administration and Interpretation of Chest Radiographs (X-rays)

Proposed Appendix A retains the current standards for acquiring chest X-rays using film-screen technology (with minor modifications) and establishes standards for acquiring and interpreting chest X-rays using digital radiography systems.

The Department's proposal divides Appendix A into four primary sections: paragraph (a) provides definitions applicable to either the film or digital chest X-ray standards, or both; paragraph (b) sets out general standards applicable to both film and digital X-rays; paragraph (c) retains the standards for film-based X-rays; and paragraph (d) establishes the new standards for acquiring and interpreting digital X-rays. The initial paragraph of the Appendix, which describes the background and purpose of the standards, remains unchanged.

Paragraph (a)'s definitions are adopted from the NIOSH rules and inform the remaining Appendix provisions.

Paragraph (b) includes general provisions that are applicable when obtaining both film and digital chest radiographs. Subparagraph (b)(1) is new and requires that facilities performing chest X-rays must continue to meet applicable local, State, and Federal licensing and certification requirements. In order to minimize the miner's risk from radiation exposure, (b)(1) also recommends that facilities conform to recognized industry standards regarding such exposure in the absence of other governing regulations. Subparagraph (b)(2) mirrors the NIOSH rules and requires that radiographs be performed by a qualified physician or radiologic technologist. *See* 42 CFR 37.40(c). This provision applies to both film and digital radiographs. Although the Department does not currently impose this requirement on film-based X-rays, doing so should not pose any problems for the regulated community because it comports with standard industry practice and the term ''radiologic technologist'' is broadly defined at Appendix A, subparagraph (a)(4). Finally, subparagraphs (b)(3) and (b)(4) retain general rules for performing X-rays that currently appear in paragraphs (2) and (10).

Paragraph (c) retains the existing standards for chest X-rays obtained by film with a few minor changes. For the sake of consistency with paragraph (d) of the Appendix, the Department has replaced the phrase ''1/20 of a second'' with 50 milliseconds, and the phrase ''1/10 of a second'' with ''100 milliseconds'' in current subparagraph (8)(i) (now located at subparagraph (c)(7)(i)). No change in meaning is intended. The Department has also amended the film speed requirements in current subparagraph (8)(iii) (now located at subparagraph (c)(7)(iii)) by adopting the NIOSH rule. *See* 42 CFR 37.41(i)(3). This change clarifies that the use of medium-speed film and intensifying screens is recommended but not required. Finally, the Department has deleted the term ''densitometric'' in current paragraph (12) (now located at subparagraph (c)(10)) because it is unnecessary.

Paragraph (d) is new and constitutes the bulk of the revisions to the Appendix. It sets out quality standards for acquiring chest radiographs using digital radiography systems as well as interpreting and transmitting them. As explained above, the Department adopted these provisions from the NIOSH rules. NIOSH fully explained these standards when it first proposed them and when it promulgated the final version. *See* 77 FR 56718–56735 (September 13, 2012) (final rule); 77 FR 1360–1385 (January 9, 2012) (proposed rule). In adopting the rule, NIOSH emphasized that the burden imposed by the standards would be low because they reflected standard industry practice and technology (*e.g.,* the DICOM standards). 77 FR 56724 (September 13, 2012); 77 FR 1372 (January 9, 2012). Moreover, many of the facilities that participate in the CWHSP will also be used to provide X-rays for BLBA claims because they are located in coal mining regions. These facilities already adhere to the NIOSH criteria and will not have to change their practices for the BLBA program. Thus, for the reasons stated by NIOSH, the Department believes that adopting these standards will ensure the quality of digital X-rays.

V. Administrative Law Considerations

A. Information Collection Requirements (Subject to the Paperwork Reduction Act)

This rulemaking would impose no new collections of information.

B. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has considered this proposed rule with these principles in mind and has concluded that the regulated community will greatly benefit from this regulation.

This rule's greatest benefit is that it will increase the amount of access the Department and the parties to BLBA claims have to radiographic technology. From the Department's view, this rule will likely reduce delays in processing miners' benefits claims. The Department must offer each miner who files a claim an opportunity for a complete pulmonary evaluation. 30 U.S.C. 923(b); 20 CFR 718.101(a), 725.406. One component of that complete evaluation is a chest X-ray. 20 CFR 725.406(a). In recent years, many medical providers otherwise qualified to perform these evaluations have declined because they do not have film-based radiography systems available to them. This has led to a shortage of examining physicians. Because this rule will allow for routine acceptance of digital radiographs, the Department anticipates that it will be able to increase the number of providers available to conduct the initial complete pulmonary evaluation and reduce some delays in claim processing.

Claimants and coal mine operators (and their insurers) will similarly benefit. As the medical industry has transitioned from film to digital radiography systems over the past several years, the private parties have faced challenges in obtaining film-based X-rays. Miners have often had to travel long distances to obtain a film-based X-ray because the digital radiography services offered at a local clinic would not suffice. Not surprisingly, black lung claimants, coal-mine operators, and their representatives have repeatedly made informal requests for the Department to promulgate quality standards for digital X-rays.

This rule also will relieve parties of a demanding evidentiary burden they face when submitting interpretations based on digital X-rays. Digital X-ray interpretations are admissible in BLBA claim proceedings, but only if the interpretation's proponent establishes to the adjudicator's satisfaction that digital X-rays are medically acceptable and relevant to the claimant's entitlement to benefits. *See generally* 20 CFR 718.107;

Webber v. *Peabody Coal Co.,* 23 BLR 1–123 (2006) (*en banc*); *Harris* v. *Old Ben Coal Co.,* 23 BLR 1–98 (2006) (*en banc*), *aff'd on recon.,* 24 BLR 1–13 (2007) (*en banc*). If the proponent fails to meet this burden, the adjudicator does not have to consider the evidence. This rule will relieve all parties of this additional proof burden, putting digital X-rays on a similar footing to film X-rays. So long as the regulatory quality standards are met, a party need not prove medical acceptability to have interpretations of digital X-rays admitted and considered.

The Department has considered whether the parties will realize any monetary benefits or incur any additional costs in light of this proposed rule, and has concluded that it is a cost-neutral rule for several reasons. The rule expands opportunities for claimants and coal mine employers to obtain X-ray evidence. But it does not require any party to use digital X-ray systems. Thus, even if obtaining digital X-rays proved more costly, absorbing that cost is optional. In addition, the Department believes that medical facilities generally do not have different fee structures for film and digital radiographs. Instead, standard medical coding systems (*e.g.,* CPT codes) used to reimburse these facilities and process payments for chest X-rays use codes that do not reference the type of technology used to perform the X-rays. *See, e.g., http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/index.html.* Finally, to the extent miners will be able to use digital X-ray facilities closer to their homes, their lower travel costs—which in some instances are paid by the Department or passed on to the coal mine operator if the miner prevails on his benefits claim, 20 CFR 725.406(e)—will result in some minor savings.

Executive Order 13563 also instructs agencies to review ''rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them.'' As explained in the section-by-section analysis above, this proposed rule revises obsolete terms (*e.g.,* replacing ''roentgenogram'' with ''radiograph'' or ''X-ray'') and removes outmoded provisions (*e.g.,* eliminating X-ray rereading prohibition provisions).

Finally, because this is not a ''significant'' rule within the meaning of Executive Order 12866, the Office of Management and Budget has not reviewed it prior to publication.

C. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.,* directs agencies to assess the effects of Federal Regulatory Actions on State, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' 2 U.S.C. 1531. For purposes of the Unfunded Mandates Reform Act, this proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, tribal governments, or increased expenditures by the private sector of more than $100,000,000.

D. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.* (RFA), requires agencies to evaluate the potential impacts of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions and to prepare an analysis (called a ''regulatory flexibility analysis'') describing those impacts. *See* 5 U.S.C. 601, 603–604. But if the rule is not expected to ''have a significant economic impact on a substantial number of small entities[,]'' the RFA allows an agency to so certify in lieu of preparing the analysis. *See* 5 U.S.C. 605.

The Department has determined that a regulatory flexibility analysis under the RFA is not required for this rulemaking. While many coal mine operators are small entities within the meaning of the RFA, *see* 77 FR 19471–72 (March 30, 2012), this rule, if adopted, will not have a significant economic impact on them for several reasons. First, this rule does not require operators to obtain digital radiographs. By promulgating quality standards specific to digital X-rays, the Department is simply providing another option to coal mine operators (and their insurers) for developing medical evidence in the BLBA claims process. Operators will be free to continue to use film-based technology. Second, even if an operator chooses to obtain digital radiographs, the Department believes that the cost for obtaining a digital X-ray will be comparable if not identical to a film-X-ray's cost. In considering this issue, the Department reviewed the medical reimbursement schedule published by the U.S. Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS). The CMS schedule, which forms the basis for many public and private reimbursement schemes, does not differentiate between film-based and digitally acquired chest X-rays; instead, the schedule lists reimbursement computation formulas for different types of chest X-rays without reference to the technology used to obtain them. *See http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/index.html*). Moreover, NIOSH anticipates that lower costs for chest X-rays in general may result from medical facilities switching to digital radiography systems. *See* 77 FR 1372 (January 9, 2012). Third, this rule is expected to benefit all coal mine operators by increasing access to medical facilities that exclusively use digital radiography or are transitioning to this technology.

Based on these facts, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required. The Department invites comments from members of the public who believe the regulations will have a significant economic impact on a substantial number of small coal mine operators. The Department has provided the Chief Counsel for Advocacy of the Small Business Administration with a copy of this certification. *See* 5 U.S.C. 605.

E. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' E.O. 13132, 64 FR 43255 (Aug. 4, 1999). The proposed rule 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.'' *Id.*

F. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the 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.

List of Subjects in 20 CFR Parts 718 and 725

Black lung benefits, Claims, Coal miners' entitlement to benefits, Incorporation by reference, Survivors' entitlement to benefits, Total disability due to pneumoconiosis, Workers' compensation, X-rays.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR parts 718 and 725 as follows:

PART 718—STANDARDS FOR DETERMINING COAL MINERS' TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

■ 1. The authority citation for part 718 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.,* 902(f), 934, 936; 33 U.S.C. 901 *et seq.;* 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

■ 2. Add § 718.5 to subpart A to read as follows:

§ 718.5 Incorporations by reference.

(a) The materials listed in paragraphs (b) through (f) of this section are incorporated by reference in this part. The Director of the Federal Register has approved these incorporations by reference under 5 U.S.C. 522(a) and 1 CFR part 51. To enforce any edition other than that specified in these regulations, OWCP must publish notice of change in the **Federal Register**. All approved material is available from the sources listed below. You may inspect a copy of the approved material at the Division of Coal Mine Workers' Compensation, OWCP, U.S. Department of Labor, Washington, DC. To arrange for an inspection at OWCP, call 202–693–0046. These materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federalregister/codeoffederalregulations/ibrlocations.html.*

(b) American Association of Physicists in Medicine, Order Department, Medical Physics Publishing, 4513 Vernon Blvd., Madison, WI 53705, *http://www.aapm.org/pubs/reports:*

(1) AAPM On-Line Report No. 03, Assessment of Display Performance for Medical Imaging Systems, April 2005, IBR approved for Appendix A to part 718, paragraph (d).

(2) AAPM Report No. 93, Acceptance Testing and Quality Control of Photostimulable Storage Phosphor Imaging Systems, October 2006, IBR approved for Appendix A to part 718, paragraph (d).

(c) American College of Radiology, 1891 Preston White Dr., Reston, VA 20191, *http://www.acr.org/~/media/ACR/Documents/PGTS/guidelines/Reference_Levels.pdf:*

(1) ACR Practice Guideline for Diagnostic Reference Levels in Medical X-Ray Imaging, Revised 2008 (Resolution 3), IBR approved for Appendix A to part 718, paragraph (d).

(2) [Reserved]

(d) International Labour Office, CH–1211 Geneva 22, Switzerland, *http://www.ilo.org/publns:*

(1) Occupational Safety and Health Series No. 22, Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, Revised edition 2011, IBR approved for § 718.102(d) and Appendix A to part 718, paragraph (d).

(2) Occupational Safety and Health Series No. 22 (Rev. 2000), Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, Revised edition 2000, IBR approved for § 718.102(d).

(3) Occupational Safety and Health Series No. 22 (Rev. 80), Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses, Revised edition 1980, IBR approved for § 718.102(d).

(e) National Council on Radiation Protection and Measurements, NCRP Publications, 7910 Woodmont Avenue, Suite 400, Bethesda, MD 20814–3095, Telephone (800) 229–2652, *http://www.ncrppublications.org:*

(1) NCRP Report No. 102, Medical X-Ray, Electron Beam, and Gamma-Ray Protection for Energies Up to 50 MeV (Equipment Design, Performance, and Use), issued June 30, 1989, IBR approved for Appendix A to part 718, paragraph (b).

(2) NCRP Report No. 105, Radiation Protection for Medical and Allied Health Personnel, issued October 30, 1989, IBR approved for Appendix A to part 718, paragraph (b).

(3) NCRP Report No. 147, Structural Shielding Design for Medical X-Ray Imaging Facilities, revised March 18, 2005, IBR approved for Appendix A to part 718, paragraph (b).

(f) National Electrical Manufacturers Association, 1300 N. 17th Street, Rosslyn, VA 22209, *http://medical.nema.org:*

(1) DICOM Standard PS 3.3–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 3: Information Object Definitions, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(2) DICOM Standard PS3.4–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 4: Service Class Specifications, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(3) DICOM Standard PS 3.10–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 10: Media Storage and File Format for Media Interchange, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(4) DICOM Standard PS 3.11–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 11: Media Storage Application Profiles, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(5) DICOM Standard PS 3.12–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 12: Media Formats and Physical Media for Media Interchange, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(6) DICOM Standard PS 3.14–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 14: Grayscale Standard Display Function, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

(7) DICOM Standard PS 3.16–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 16: Content Mapping Resource, copyright 2011, IBR approved for Appendix A to part 718, paragraph (d).

■ 3. Revise § 718.101(a) to read as follows:

§ 718.101 General.

(a) The Office of Workers' Compensation Programs (hereinafter OWCP or the Office) must develop the medical evidence necessary to determine each claimant's entitlement to benefits. Each miner who files a claim for benefits under the Act must be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation including, but not limited to, a chest radiograph (X-ray), physical examination, pulmonary function tests, and a blood-gas study.

* * * * *

■ 4. Revise § 718.102 to read as follows:

§ 718.102 Chest radiographs (X-rays).

(a) A chest radiograph (X-ray) must be of suitable quality for proper classification of pneumoconiosis and must conform to the standards for administration and interpretation of chest X-rays as described in Appendix A.

(b) Chest X-rays may be produced by either film or digital radiography systems as defined in Appendix A.

(c) The images described in paragraphs (c)(1) and (2) will not be considered of suitable quality for proper classification of pneumoconiosis under this section:

(1) Digital images derived from film screen chest X-rays (*e.g.,* by scanning or digital photography); and

(2) Images that were acquired using digital systems and then printed on transparencies for back-lighted display (*e.g.,* using traditional view boxes).

(d) Standards for classifying radiographs:

(1) To establish the existence of pneumoconiosis, a film chest X-ray must be classified as Category 1, 2, 3, A, B, or C, in accordance with the International Labour Organization (ILO) classification system established in one of the following:

(i) Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, revised edition 2011 (incorporated by reference, *see* § 718.5).

(ii) Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, revised edition 2000 (incorporated by reference, *see* § 718.5).

(iii) Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses, revised edition 1980 (incorporated by reference, *see* § 718.5).

(2) To establish the existence of pneumoconiosis, a digital chest radiograph must be classified as Category 1, 2, 3, A, B, or C, in accordance with the ILO classification system established in Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, revised edition 2011.

(3) A chest radiograph classified under any of the foregoing ILO classification systems as Category 0, including subcategories 0-, 0/0, or 0/1, does not constitute evidence of pneumoconiosis.

(e) An X-ray report must include the following:

(1) The name and qualifications of the person who took the X-ray.

(2) The name and qualifications of the physician who interpreted the X-ray. The interpreting physician must indicate whether he or she was a Board-certified radiologist, a Board-eligible radiologist, or a Certified B Reader as defined below on the date the interpretation was made.

(i) *Board-certified radiologist* means that the physician is certified in radiology or diagnostic radiology by the American Board of Radiology, Inc., or the American Osteopathic Association.

(ii) *Board-eligible radiologist* means that the physician has successfully completed a formal accredited residency program in radiology or diagnostic radiology.

(iii) *Certified B Reader* means that the physician has demonstrated ongoing proficiency in evaluating chest radiographs for radiographic quality and in the use of the ILO classification for interpreting chest radiographs for pneumoconiosis and other diseases by taking and passing a specially designed proficiency examination given on behalf of or by the National Institute for Occupational Safety and Health (NIOSH), and has maintained that certification through the date the interpretation is made. *See* 42 CFR 37.52(b).

(3) A description and interpretation of the findings in terms of the ILO classification described in paragraph (d) of this section.

(4) A statement that the X-ray was interpreted in compliance with this section.

(f) Radiograph Submission. For film X-rays, the original film on which the X-ray report is based must be supplied to OWCP. For digital X-rays, a copy of the original digital object upon which the X-ray report is based, formatted to meet the standards for transmission of diagnostic chest images set forth in Appendix A, paragraph (d), must be provided to OWCP on a DVD or other media specified by OWCP. In cases where the law prohibits the parties or a physician from supplying the original film or a copy of the digital image, the report will be considered as evidence only if the original film or digital image is otherwise available to OWCP and the other parties.

(g) Where the chest X-ray of a deceased miner has been lost or destroyed, or is otherwise unavailable, a report of the chest X-ray submitted by any party may be considered in connection with the claim.

(h) Except as provided in this paragraph, no chest X-ray may constitute evidence of the presence or absence of pneumoconiosis unless it is conducted and reported in accordance with the requirements of this section and Appendix A. In the absence of evidence to the contrary, compliance with the requirements of Appendix A must be presumed. In the case of a deceased miner where the only available X-ray does not substantially comply with paragraphs (a) through (e) of this section, the X-ray may form the basis for a finding of the presence or absence of pneumoconiosis if it is of sufficient quality for determining whether pneumoconiosis is present and it was interpreted by a Board-certified radiologist, Board-eligible radiologist, or Certified B Reader.

■ 5. Revise § 718.202 to read as follows:

§ 718.202 Determining the existence of pneumoconiosis.

(a) A finding of the existence of pneumoconiosis may be made as follows in paragraphs (a)(1) through (4):

(1) A chest X-ray conducted and classified in accordance with § 718.102 may form the basis for a finding of the existence of pneumoconiosis. Except as otherwise provided in this section, where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration must be given to the radiological qualifications of the physicians interpreting such X-rays (*see* § 718.102(d)).

(2) A biopsy or autopsy conducted and reported in compliance with § 718.106 may be the basis for a finding of the existence of pneumoconiosis. A finding in an autopsy or biopsy of anthracotic pigmentation, however, must not be considered sufficient, by itself, to establish the existence of pneumoconiosis. A report of autopsy must be accepted unless there is evidence that the report is not accurate or that the claim has been fraudulently represented.

(3) If the presumptions described in § 718.304, § 718.305, or § 718.306 are applicable, it must be presumed that the miner is or was suffering from pneumoconiosis.

(4) A determination of the existence of pneumoconiosis may also be made if a physician, exercising sound medical judgment, notwithstanding a negative X-ray, finds that the miner suffers or suffered from pneumoconiosis as defined in § 718.201. Any such finding must be based on objective medical evidence such as blood-gas studies, electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories. Such a finding must be supported by a reasoned medical opinion.

(b) A claim for benefits must not be denied solely on the basis of a negative chest X-ray.

(c) A determination of the existence of pneumoconiosis must not be made—

(1) Solely on the basis of a living miner's statements or testimony; or

(2) In a claim involving a deceased miner, solely on the basis of the affidavit(s) (or equivalent testimony) of the claimant and/or his or her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved.

■ 6. Revise § 718.304 to read as follows:

§ 718.304 Irrebuttable presumption of total disability or death due to pneumoconiosis.

There is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis, that a miner's death was due to pneumoconiosis or that a miner was totally disabled due to pneumoconiosis at the time of death, if such miner is suffering or suffered from a chronic dust disease of the lung which:

(a) When diagnosed by chest X-ray (*see* § 718.202 concerning the standards for X-rays and the effect of interpretations of X-rays by physicians) yields one or more large opacities (greater than one centimeter in diameter) and would be classified in Category A, B, or C in accordance with the classification system established in Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses as provided in § 718.102(d); or

(b) When diagnosed by biopsy or autopsy, yields massive lesions in the lung; or

(c) When diagnosed by means other than those specified in paragraphs (a) and (b) of this section, would be a condition which could reasonably be expected to yield the results described in paragraph (a) or (b) of this section had diagnosis been made as therein described: *Provided, however,* that any diagnosis made under this paragraph must accord with acceptable medical procedures.

■ 7. Revise Appendix A to Part 718 to read as follows:

Appendix A to Part 718—Standards for Administration and Interpretation of Chest Radiographs (X-rays)

The following standards are established in accordance with sections 402(f)(1)(D) and 413(b) of the Act. They were developed in consultation with the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention in the Department of Health and Human Services. These standards are promulgated for the guidance of physicians and medical technicians to ensure that uniform procedures are used in administering and interpreting X-rays and that the best available medical evidence will be submitted in connection with a claim for black lung benefits. If it is established that one or more standards have not been met, the claims adjudicator may consider such fact in determining the evidentiary weight to be assigned to the physician's report of an X-ray.

(a) Definitions

(1) *Digital radiography systems,* as used in this context, include both digital radiography (DR) and computed radiography (CR). Digital radiography is the term used for digital X-ray image acquisition systems in which the X-ray signals received by the image detector are converted nearly instantaneously to electronic signals without moveable cassettes. Computed radiography is the term for digital X-ray image acquisition systems that detect X-ray signals using a cassette-based photostimulable storage phosphor. Subsequently, the cassette is processed using a stimulating laser beam to convert the latent radiographic image to electronic signals which are then processed and stored so they can be displayed.

(2) *Qualified medical physicist* means an individual who is trained in evaluating the performance of radiographic equipment including radiation controls and facility quality assurance programs, and has the relevant current certification by a competent U.S. national board, or unrestricted license or approval from a U.S. State or Territory.

(3) *Radiographic technique chart* means a table that specifies the types of cassette, intensifying screen, film or digital detector, grid, filter, and lists X-ray machine settings (timing, kVp, mA) that enables the radiographer to select the correct settings based on the body habitus or the thickness of the chest tissue.

(4) *Radiologic technologist* means an individual who has met the requirements for privileges to perform general radiographic procedures and for competence in using the equipment and software employed by the examining facility to obtain chest images as specified by the State or Territory and examining facility in which such services are provided. Optimally, such an individual will have completed a formal training program in radiography leading to a certificate, an associate's degree, or a bachelor's degree and participated in the voluntary initial certification and annual renewal of registration for radiologic technologists offered by the American Registry of Radiologic Technologists.

(5) *Soft copy* means the image of a coal miner's chest radiograph acquired using a digital radiography system, viewed at the full resolution of the image acquisition system using an electronic medical image display device.

(b) General provisions

(1) Facilities must maintain ongoing licensure and certification under relevant local, State, and Federal laws and regulations for all digital equipment and related processes covered by this Appendix. Radiographic equipment, its use and the facilities (including mobile facilities) in which such equipment is used must conform to applicable State or Territorial and Federal regulations. Where no applicable regulations exist regarding reducing the risk from ionizing radiation exposure in the clinical setting, radiographic equipment, its use and the facilities (including mobile facilities) in which such equipment is used should conform to the recommendations in NCRP Report No. 102, NCRP Report No. 105, and NCRP Report No. 147 (incorporated by reference, *see* § 718.5).

(2) Chest radiographs of miners must be performed:

(i) By or under the supervision of a physician who makes chest radiographs in the normal course of practice and who has demonstrated ability to make chest radiographs of a quality to best ascertain the presence of pneumoconiosis; or

(ii) By a radiologic technologist.

(3) Miners must be disrobed from the waist up at the time the radiograph is given. The facility must provide a dressing area and for those miners who wish to use one, the facility will provide a clean gown. Facilities must be heated to a comfortable temperature.

(4) Before the miner is advised that the examination is concluded, the radiograph must be processed and inspected and accepted for quality standards by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist. In a case of a substandard radiograph, another must be made immediately.

(c) Chest radiograph specifications—film.

(1) Every chest radiograph must be a single posteroanterior projection at full inspiration on a film being no less than 14 by 17 inch film. Additional chest films or views must be obtained if they are necessary for clarification and classification. The film and cassette must be capable of being positioned both vertically and horizontally so that the chest radiograph will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then a projection with minimum loss of costophrenic angle must be made.

(2) Radiographs must be made with a diagnostic X-ray machine having a rotating anode tube with a maximum of a 2 mm source (focal spot).

(3) Except as provided in paragraph (c)(4), radiographs must be made with units having generators that comply with the following:

(i) Generators of existing radiographic units acquired by the examining facility prior to July 27, 1973, must have a minimum rating of 200 mA at 100 kVp;

(ii) Generators of units acquired subsequent to that date must have a minimum rating of 300 mA at 125 kVp. A generator with a rating of 150 kVp is recommended.

(4) Radiographs made with battery-powered mobile or portable equipment must be made with units having a minimum rating of 100 mA at 110 kVp at 500 Hz, or 200 mA at 110 kVp at 60 Hz.

(5) Capacitor discharge and field emission units may be used.

(6) Radiographs must be given only with equipment having a beam-limiting device that does not cause large unexposed boundaries. The use of such a device must be discernible from an examination of the radiograph.

(7) To ensure high quality chest radiographs:

(i) The maximum exposure time must not exceed 50 milliseconds except that with single phase units with a rating less than 300 mA at 125 kVp and subjects with chests over 28 cm postero-anterior, the exposure may be increased to not more than 100 milliseconds;

(ii) The source or focal spot to film distance must be at least 6 feet.

(iii) Medium-speed film and medium-speed intensifying screens are recommended. However, any film-screen combination, the rated ''speed'' of which is at least 100 and does not exceed 300, which produces radiographs with spatial resolution, contrast, latitude and quantum mottle similar to those of systems designated as ''medium speed'' may be employed;

(iv) Film-screen contact must be maintained and verified at 6-month or shorter intervals.

(v) Intensifying screens must be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer;

(vi) All intensifying screens in a cassette must be of the same type and made by the same manufacturer;

(vii) When using over 90 kV, a suitable grid or other means of reducing scattered radiation must be used;

(viii) The geometry of the radiographic system must ensure that the central axis (ray) of the primary beam is perpendicular to the plane of the film surface and impinges on the center of the film.

(8) Radiographic processing:

(i) Either automatic or manual film processing is acceptable. A constant time-temperature technique must be meticulously employed for manual processing.

(ii) If mineral or other impurities in the processing water introduce difficulty in obtaining a high-quality radiograph, a suitable filter or purification system must be used.

(9) An electric power supply must be used that complies with the voltage, current, and regulation specified by the manufacturer of the machine.

(10) A test object may be required on each radiograph for an objective evaluation of film quality at the discretion of the Department of Labor.

(11) Each radiograph made under this Appendix must be permanently and legibly marked with the name and address of the facility at which it is made, the miner's DOL claim number, the date of the radiograph, and left and right side of the film. No other identifying markings may be recorded on the radiograph.

(d) Chest radiograph specifications—digital radiography systems

(1) Every digital chest radiograph must be a single posteroanterior projection at full inspiration on a digital detector with sensor area being no less than 1505 square centimeters with a minimum width of 35 cm. The imaging plate must have a maximum pixel pitch of 200 μm, with a minimum bit depth of 10. Spatial resolution must be at least 2.5 line pairs per millimeter. The storage phosphor cassette or digital image detector must be positioned either vertically or horizontally so that the image includes the apices and costophrenic angles of both right and left lungs. If the detector cannot include the apices and costophrenic angles of both lungs as described, then the two side-by-side images can be obtained that together include the apices and costophrenic angles of both right and left lungs.

(2) Radiographs must be made with a diagnostic X-ray machine with a maximum actual (not nominal) source (focal spot) of 2 mm, as measured in two orthogonal directions.

(3) Radiographs must be made with units having generators which have a minimum rating of 300 mA at 125 kVp. Exposure kilovoltage must be at least the minimum as recommended by the manufacturer for chest radiography.

(4) An electric power supply must be used that complies with the voltage, current, and regulation specified by the manufacturer of the machine. If the manufacturer or installer of the radiographic equipment recommends equipment for control of electrical power fluctuations, such equipment must be used as recommended.

(5) Radiographs must be obtained only with equipment having a beam-limiting device that does not cause large unexposed boundaries. The beam limiting device must provide rectangular collimation. Electronic post-image acquisition ''shutters'' available on some CR or DR systems that limit the size of the final image and that simulate collimator limits must not be used. The use and effect of the beam limiting device must be discernible on the resulting image.

(6) Radiographic technique charts must be used that are developed specifically for the X-ray system and detector combinations used, indicating exposure parameters by anatomic measurements.

(7) To ensure high quality chest radiographs:

(i) The maximum exposure time must not exceed 50 milliseconds except for subjects with chests over 28 cm posteroanterior, for whom the exposure time must not exceed 100 milliseconds.

(ii) The distance from source or focal spot to detector must be at least 70 inches (or 180 centimeters if measured in centimeters).

(iii) The exposure setting for chest images must be within the range of 100–300 equivalent exposure speeds and must comply with ACR Practice Guidelines for Diagnostic Reference Levels in Medical X-ray Imaging, Section V—Diagnostic Reference Levels for Imaging with Ionizing Radiation and Section VII-Radiation Safety in Imaging (incorporated by reference, *see* § 718.5). Radiation exposures should be periodically measured and patient radiation doses estimated by the medical physicist to assure doses are as low as reasonably achievable.

(iv) Digital radiography system performance, including resolution, modulation transfer function (MTF), image signal-to-noise and detective quantum efficiency must be evaluated and judged acceptable by a qualified medical physicist using the specifications in AAPM Report No. 93, pages 1–68 (incorporated by reference, *see* § 718.5). Image management software and settings for routine chest imaging must be used, including routine amplification of digital detector signal as well as standard image post-processing functions. Image or edge enhancement software functions must not be employed unless they are integral to the digital radiography system (not elective); in such cases, only the minimum image enhancement permitted by the system may be employed.

(v)(A) The image object, transmission and associated data storage, film format, and transmissions of associated information must conform to the following components of the Digital Imaging and Communications in Medicine (DICOM) standard (incorporated by reference, *see* § 718.5):

(*1*) DICOM Standard PS 3.3–2011, Annex A—Composite Information Object Definitions, sections: Computed Radiographic Image Information Object Definition; Digital X-Ray Image Information Object Definition; X-Ray Radiation Dose SR Information Object Definition; and Grayscale Softcopy Presentation State Information Object Definition.

(*2*) DICOM Standard PS 3.4–2011: Annex B—Storage Service Class; Annex N—Softcopy Presentation State Storage SOP Classes; Annex O—Structured Reporting Storage SOP Classes.

(*3*) DICOM Standard PS 3.10–2011.

(*4*) DICOM Standard PS 3.11–2011.

(*5*) DICOM Standard PS 3.12–2011.

(*6*) DICOM Standard PS 13.14–2011.

(*7*) DICOM Standard PS 3.16–2011.

(B) Identification of each miner, chest image, facility, date and time of the examination must be encoded within the image information object, according to DICOM Standard PS 3.3–2011, Information Object Definitions, for the DICOM ''DX'' object. If data compression is performed, it must be lossless. Exposure parameters (kVp, mA, time, beam filtration, scatter reduction, radiation exposure) must be stored in the DX information object.

(C) Exposure parameters as defined in the DICOM Standard PS 3.16–2011 must additionally be provided when such parameters are available from the facility digital image acquisition system or recorded in a written report or electronic file and transmitted to OWCP.

(8) A specific test object may be required on each radiograph for an objective evaluation of image quality at the Department of Labor's discretion.

(9) CR imaging plates must be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer.

(10) A grid or air gap for reducing scattered radiation must be used; grids must not be used that cause Moiré interference patterns in either horizontal or vertical images.

(11) The geometry of the radiographic system must ensure that the central axis (ray) of the primary beam is perpendicular to the plane of the CR imaging plate or DR detector and is correctly aligned to the grid.

(12) Radiographs must not be made when the environmental temperatures and humidity in the facility are outside the manufacturer's recommended range of the CR and DR equipment to be used.

(13) All interpreters, whenever classifying digitally acquired chest radiographs, must have immediately available for reference a complete set of ILO standard digital chest radiographic images provided for use with the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (2011 Revision) (incorporated by reference, *see* § 718.5). Modification of the appearance of the standard images using software tools is not permitted.

(14) Viewing systems should enable readers to display the coal miner's chest image at the full resolution of the image acquisition system, side-by-side with the selected ILO standard images for comparison.

(i)(A) Image display devices must be flat panel monitors displaying at least 3 MP at 10 bit depth. Image displays and associated graphics cards must meet the calibration and other specifications of the Digital Imaging and Communications in Medicine (DICOM) standard PS 3.14–2011 (incorporated by reference, *see* § 718.5).

(B) Image displays and associated graphics cards must not deviate by more than 10 percent from the grayscale standard display function (GSDF) when assessed according to the AAPM On-Line Report No. 03, pages 1–146 (incorporated by reference, *see* § 718.5).

(ii) Display system luminance (maximum and ratio), relative noise, linearity, modulation transfer function (MTF), frequency, and glare should meet or exceed recommendations listed in AAPM On-Line Report No. 03, pages 1–146 (incorporated by reference, *see* § 718.5). Viewing displays must have a maximum luminance of at least 171 cd/m^2, a ratio of maximum luminance to minimum luminance of at least 250, and a glare ratio greater than 400. The contribution of ambient light reflected from the display surface, after light sources have been minimized, must be included in luminance measurements.

(iii) Displays must be situated so as to minimize front surface glare. Readers must minimize reflected light from ambient sources during the performance of classifications.

(iv) Measurements of the width and length of pleural shadows and the diameter of opacities must be taken using calibrated software measuring tools. If permitted by the viewing software, a record must be made of the presentation state(s), including any noise reduction and edge enhancement or restoration functions that were used in performing the classification, including any annotations and measurements.

(15) Quality control procedures for devices used to display chest images for classification must comply with the recommendations of the American Association of Physicists in Medicine AAPM On-Line Report No. 03, pages 1–146 (incorporated by reference, *see* § 718.5). If automatic quality assurance systems are used, visual inspection must be performed using one or more test patterns recommended by the medical physicist every 6 months, or more frequently, to check for defects that automatic systems may not detect.

(16) Classification of CR and DR digitally-acquired chest radiographs under this Part must be performed based on the viewing images displayed as soft copies using the viewing workstations specified in this section. Classification of radiographs must not be based on the viewing of hard copy printed transparencies of images that were digitally-acquired.

(17) The classification of chest radiographs based on digitized copies of chest radiographs that were originally acquired using film-screen techniques is not permissible.

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 8. The authority citation for part 725 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.,* 902(f), 921, 932, 936; 33 U.S.C. 901 *et seq.;* 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

■ 9. In § 725.406, revise paragraphs (a), (b), (c) and (e) to read as follows:

§ 725.406 Medical examinations and tests.

(a) The Act requires the Department to provide each miner who applies for benefits with the opportunity to undergo a complete pulmonary evaluation at no expense to the miner. A complete pulmonary evaluation includes a report of physical examination, a pulmonary function study, a chest radiograph, and, unless medically contraindicated, a blood gas study.

(b) As soon as possible after a miner files an application for benefits, the district director will provide the miner with a list of medical facilities and physicians in the state of the miner's residence and states contiguous to the state of the miner's residence that the Office has authorized to perform complete pulmonary evaluations. The miner must select one of the facilities or physicians on the list, provided that the miner may not select any physician to whom the miner or the miner's spouse is related to the fourth degree of consanguinity, and the miner may not select any physician who has examined or provided medical treatment to the miner within the twelve months preceding the date of the miner's application. The district director will make arrangements for the miner to be given a complete pulmonary evaluation by that facility or physician. The results of the complete pulmonary evaluation must not be counted as evidence submitted by the miner under § 725.414.

(c) If any medical examination or test conducted under paragraph (a) of this section is not administered or reported in substantial compliance with the provisions of part 718 of this subchapter, or does not provide sufficient information to allow the district director to decide whether the miner is eligible for benefits, the district director must schedule the miner for further examination and testing. Where the deficiencies in the report are the result of a lack of effort on the part of the miner, the miner will be afforded one additional opportunity to produce a satisfactory result. In order to determine whether any medical examination or test was administered and reported in substantial compliance with the provisions of part 718 of this subchapter, the district director may have any component of such examination or test reviewed by a physician selected by the district director.

* * * * *

(e) The cost of any medical examination or test authorized under this section, including the cost of travel to and from the examination, must be paid by the fund. Reimbursement for overnight accommodations must not be authorized unless the district director determines that an adequate testing facility is unavailable within one day's round trip travel by automobile from the miner's residence. The fund must be reimbursed for such payments by an operator, if any, found liable for the payment of benefits to the claimant. If an operator fails to repay such expenses, with interest, upon request of the Office, the entire amount may be collected in an action brought under section 424 of the Act and § 725.603 of this part.

Signed at Washington, DC, this 3rd day of June, 2013.

Gary A. Steinberg,

Acting Director, Office of Workers' Compensation Programs.

[FR Doc. 2013–13971 Filed 6–12–13; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. OSHA–2013–0005]

RIN 1218–AC77

Updating OSHA Standards Based on National Consensus Standards; Signage

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Occupational Safety and Health Administration (''OSHA'' or ''the Agency'') proposes to update its general industry and construction signage standards by adding references to the latest versions of the American National Standards Institute (''ANSI'') standards on specifications for accident prevention signs and tags, ANSI Z535.1–2006(R2011), Z535.2–2011, and Z535.5–2011. OSHA also is proposing to retain the existing references to the earlier ANSI standards, ANSI Z53.1–1967, Z35.1–1968, and Z35.2–1968, in its signage standards, thereby providing employers an option to comply with the updated or earlier standards. In addition, OSHA is proposing to incorporate by reference Part VI of the Manual of Uniform Traffic Control Devices (''MUTCD''), 1988 Edition, Revision 3, into the incorporation-by-reference section of the construction standards, having inadvertently omitted this edition of the MUTCD from this

section during an earlier rulemaking, and amend citations in two provisions of the construction standards to show the correct incorporation-by-reference section. In addition, OSHA is publishing a direct final rule in today's **Federal Register** adding the same references.

DATES: Submit comments on this proposed rule (including comments on the information-collection (paperwork) determination described under the section titled Procedural Determinations, hearing requests, and other information by July 15, 2013. All submissions must bear a postmark or provide other evidence of the submission date (the following section titled **ADDRESSES** describes the available methods of making submissions).

ADDRESSES: Submit comments, hearing requests, and other information as follows:

• *Electronic.* Submit comments electronically to *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

• *Facsimile.* OSHA allows facsimile transmission of comments and hearing requests that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693–1648; OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (*e.g.,* studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (*i.e.,* OSHA–2013–0005) so that the Agency can attach them to the appropriate document.

• *Regular mail, express delivery, hand delivery, and messenger (courier) service.* Submit comments and any additional material (*e.g.,* studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2013–0005 or RIN 1218–AC77, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures for delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.

• *Instructions.* All submissions must include the Agency name and the OSHA docket number (*i.e.,* OSHA Docket No. OSHA–2013–0005). OSHA will place comments and other material, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

OSHA invites comment on all issues related to this proposed rule. The Agency also welcomes comments on its findings that this proposed rule would have no negative economic, paperwork, or other regulatory impact on the regulated community. This proposed rule is the companion document of a direct final rule published in the ''Rules'' section of today's **Federal Register**. If OSHA receives no significant adverse comments on the proposed rule or direct final rule, the Agency will publish a **Federal Register** notice confirming the effective date of the final rule and withdrawing this companion proposed rule. The final rule may include minor stylistic or technical corrections of the direct final rule. For the purpose of judicial review, OSHA considers the date that the Agency confirms the effective date of the final rule to be the date of issuance. If, however, OSHA receives any significant adverse comments on the direct final rule or this proposal, the Agency will publish a timely withdrawal of the direct final rule and proceed with this proposed rule, which addresses the same revisions of its signage standards.

• *Docket.* The electronic docket for this proposed rule established at *http://www.regulations.gov* lists most of the documents in the docket. Some information (*e.g.,* copyrighted material), however, cannot be read or downloaded through this Web site. All submissions, including copyrighted material, are accessible at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Contact Frank Meilinger, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–1999.

Technical inquiries: Contact Kenneth Stevanus, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693–2260; fax: (202) 693–1663.

SUPPLEMENTARY INFORMATION:

Copies of this **Federal Register** *notice.* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

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I. Direct Final Rulemaking

In a direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** along with a statement that the rule will become effective unless the agency receives any significant adverse comments within a specified period. The agency also publishes concurrently with the direct final rule an identical proposed rule. If the agency receives no significant adverse comments, the direct final rule will become effective. However, should the agency receive any significant adverse comments, the agency will withdraw the direct final rule and treat the comments as submissions on the proposed rule.

OSHA uses direct final rules to update existing consensus standards when it expects the rulemaking to be noncontroversial; when the rule provides protection to employees that is at least equivalent to the protection afforded to them by the previous standard-development organization standard; and when the rule imposes no significant new compliance costs on employers (69 FR 68283, 68285 (2004)). OSHA used direct final rules previously

to update or, when appropriate, revoke references to previous national consensus standards in OSHA rules (*see, e.g.,* 69 FR 68283 (2004); 70 FR 76979 (2006); 76 FR 75782 (2011); and 77 FR 37587 (2012)).

For the purposes of a direct final rule, a significant adverse comment is one that ''explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change'' (*see* 60 FR 43108, 43111(1995)). In determining whether a comment necessitates withdrawal of the direct final rule, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. OSHA will not consider a comment recommending additional revisions to a rule to be a significant adverse comment unless the comment states why the direct final rule would be ineffective without the revisions. If OSHA receives a timely significant adverse comment, it will publish a **Federal Register** notice withdrawing the direct final rule no later than 90 days after the publication date of this current notice.

This notice of proposed rulemaking (NPRM) furthers the objectives of Executive Order 13563, which requires that the regulatory process ''promote predictability and reduce uncertainty'' and ''identify and use the best, most innovative and least burdensome tools for achieving regulatory ends.'' As described below, the revisions will make the requirements of OSHA's signage standards consistent with the most recent national consensus standards, thereby increasing employers' compliance flexibility without compromising employee safety (for the purposes of this rulemaking, the term ''signage standards'' refers to standards that regulate both signs and tags). Accordingly, the Agency concludes that updating the references to the national consensus standards in its signage standards is consistent with, and promotes the objectives of, Executive Order 13563.

II. Background

In June 2009, the National Electrical Manufacturers Association (NEMA) contacted OSHA and, based on a letter from ANSI, requested that the Agency add references to the latest versions of ANSI's Z535 series of standards to OSHA's signage standards. Letter dated June 2, 2009, from Kyle Pitsor, Vice President, Government Relations, NEMA, to Richard Fairfax, Director, Directorate of Enforcement Programs, OSHA (Ex. OSHA–2013–0005–0003, p. 1), attaching a letter dated May 28, 2009, from Geoffrey Peckham, Chair, ANSI Z535.2 Subcommittee, to Mr. Fairfax (Ex. OSHA–2013–0005–0003, p. 3). NEMA specifically advocated incorporating by reference ANSI Z535.2, ''Environmental and Facility Safety Signs,'' in OSHA standards that refer to old [1] versions of this ANSI standard. Pitsor letter (Ex. OSHA–2013–0005–0003, p. 1); *accord* Peckham letter (Ex. OSHA–2013–0005–0003, p. 3).

Over the next few years, OSHA staff met with NEMA several times to discuss the association's request that OSHA adopt ANSI's Z535 series of standards. Besides urging OSHA to incorporate ANSI Z535.2 by reference, NEMA also asked the Agency to update its standards' references to ANSI Z53.1–67, ''Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment,'' by citing the current version of this standard, ANSI Z535.1, ''Safety Colors.'' As a result of these meetings and as recorded in a second letter to OSHA, NEMA provided the Agency with side-by-side comparisons of ANSI Z35.1–68, Z535.2–2007, and Z535.2–2011, and ANSI Z53.1–67, Z535.1–2006, and Z535.1–2006(R2011), and other relevant materials such as signs, which OSHA evaluated. Letter dated March 30, 2011, from Evan Gaddis, President and CEO, NEMA, to Dr. David Michaels, Assistant Secretary of Labor for Occupational Safety and Health; Side-by-Side Comparisons of ANSI standards; NEMA Signage Materials (Exs. OSHA–2013–0005–0004 through –0006). OSHA also subsequently considered whether it should also incorporate by reference ANSI Z535.5, ''Safety Tags and Barricade Tapes (for Temporary Hazards),'' into those OSHA standards that refer to a much older version of this ANSI standard.

At present, employers continue to use the old signs and tags not only because they are long-lasting and rarely need replacing, but also because they comply with OSHA's current signage standards, which incorporate the old ANSI standards by reference. Both NEMA and ANSI contend that incorporating the new ANSI standards by reference is necessary to encourage employers to buy and use signs and tags that comply with these standards without receiving a *de minimis* notice for failure to comply with the old ANSI standards.[2] Pitsor letter (Ex. OSHA–2013–0005–0003, p. 1); Peckham letter (Ex. OSHA–2013–0005–0003, p. 3).

NEMA and ANSI further assert that signs and tags meeting the latest version of the ANSI standards, the Z535 series, provide an equal or greater level of protection than the currently required signs that comply with the old ANSI standards, Z35.1, Z35.2, and Z53.1, cited in OSHA's standards. Pitsor letter (Ex. OSHA–2013–0005–0003, p. 1); Peckham letter (Ex. OSHA–2013–0005–0003, p. 3). In its letter, ANSI provides an exhibit demonstrating why it believes the new Z535.2–2007 signs are at least as protective as the old Z35.1 signs (Peckham letter, Ex. OSHA–2013–0005–0003, p. 10 (Peckham's Ex. 6).[3] The exhibit, which compares the information contained in the two sets of signs, shows that the new Z535.2 signs typically have at least as much information as the old, Z35.1, signs. Moreover, the new ANSI safety-color standard, ANSI Z535.1–2006(2011), includes two safety colors, brown and gray, that were not in Z53.1–1967. *See* ANSI Z535.1–2006(2011), pp. v–vi (ANSI also added safety blue in the 1979 revision after deleting this color in the 1971 revision).

ANSI and NEMA also claim that the new signs provide additional information, including the specific identity of the hazard, a description of how serious the hazard is, how to avoid the hazard, and the probable consequences of not avoiding the hazard. Peckham letter (Exs. OSHA–2013–0005–0003, pp. 7–9, and OSHA–2013–0005–0006, pp. 9–11). ANSI further argues that the old sign formats ''lack the ability to contain [the] symbols, more extensive word messages, multiple messages, and additional languages'' necessary to communicate critical safety information to an increasingly multicultural work force. *Id.,* pp. 6 and 9–10. NEMA also submitted an ANSI timeline of the institute's standards, and the safety signs that complied with those

[1] The terms ''old'' and ''older,'' as used in this **Federal Register** notice, refer specifically to signs or tags that comply with ANSI Z53.1–1967, Z35.1–1968, and Z35.2–1968.

[2] According to *OSHA's Field Operations Manual (FOM),* a *de minimis* condition occurs when ''[a]n employer has implemented a measure different than the one specified in a standard, that has no direct or immediate relationship to safety or health.'' *FOM,* CPL 02–00–150, Ch. 4, § VIII, pp. 4–36 to 4–37 (Apr. 22, 2011), available on OSHA's Web page. OSHA issues no citations or penalties for these conditions, but compliance officers will document the condition during an inspection. *Id.* at 4–36. *See, also,* Letter of Interpretation dated February 22, 2011, from Thomas Galassi, Director, Directorate of Enforcement Programs, OSHA, to Richard A. Eichel, ATA Safety, describing OSHA's *de minimis* enforcement policy with regard to ANSI signs; available at *http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27641.*

[3] This exhibit is actually Exhibit 6 of the Peckham letter, but is mislabeled as Exhibit 5.

standards, for the years 1914 to 2011; this timeline illustrates additions made to the information contained in these signs during this period. NEMA Signage Materials, pp. 6–8 (Ex. OSHA–2013–0005–0006). Based on the available record, OSHA believes that the new signs are at least as protective as the old ones. Therefore, this NPRM is proposing to incorporate the ANSI Z535 series by reference in the applicable OSHA signage standards so that employers will be able to buy and use the new signs without the prospect of receiving *de minimis* notices for using noncompliant signs. OSHA invites the public to comment on its conclusion that the new signs are as effective as the old ones.

III. Summary and Explanation of Revisions to the Signage Standards

As discussed in a previous **Federal Register** notice (69 FR 68283 (2004)), OSHA is undertaking a series of projects to update its standards to incorporate the latest versions of national consensus and industry standards. These projects include updating or removing national consensus and industry standards cited in existing OSHA standards, updating the text of standards that OSHA adopted directly from previous national consensus standards, and, when appropriate, replacing specific references to previous national consensus and industry standards with performance requirements.

This NPRM proposes to update the references to ANSI consensus standards in four provisions of OSHA's general industry and construction standards: 29 CFR 1910.97, Nonionizing radiation; § 1910.145, Specifications for accident prevention signs and tags; § 1910.261, Pulp, paper, and paper board mills; and § 1926.200, Accident prevention signs and tags. These provisions incorporate by reference ANSI consensus standards Z53.1–1967, ''Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment''; Z35.1–1968, ''Specifications for Accident Prevention Signs''; and Z35.2–1968, ''Specifications for Accident Prevention Tags.'' The NPRM would allow employers to comply with either these ANSI standards or the latest versions of them, Z535.1–2006(R2011), Z535.2–2011, and Z535.5–2011. The latter compliance option would allow employers to update their signage based on the newest ANSI consensus standards without violating OSHA's requirements. In addition, since employers would not have to update their signage, there would be no additional compliance cost or burden resulting from this rulemaking. The NPRM would revise the above four provisions in the following ways:

(1) OSHA's general industry standard on nonionizing radiation at § 1910.97(a)(3)(ii) requires employers to use the color specification provided by ANSI 53.1–1953, ''Safety Color Code for Marking Physical Hazards,'' which OSHA incorporated by reference under § 1910.6 in 1974 (39 FR 23502 (1974)). Currently, § 1910.6 refers to ANSI Z53.1–1967, ''Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment'' because, on March 7, 1996, OSHA incorporated ANSI Z53.1–1967 by reference under § 1910.6 without revising the reference to ANSI Z53.1–1953 in § 1910.97(a)(3)(ii) (*see* 61 FR 9228, 9232 (1996)). In addition, OSHA did not obtain approval from the Office of the Federal Register during the 1996 rulemaking to incorporate ANSI Z53.1–1967 by reference under § 1910.6. With this NPRM, OSHA would correct this oversight by incorporating ANSI Z53.1–1967 by reference under § 1910.6 after obtaining approval to do so from the Office of the Federal Register. In addition, this NPRM would update the nonionizing radiation provision by incorporating ANSI Z535.1–2006(R2011), ''Safety Colors,'' by reference. This addition would allow employers to comply with the 1967 version or the 2006(R2011) version of the cited ANSI standard.

(2) OSHA's general industry standard on specifications for accident-prevention signs and tags at § 1910.145 refers to ANSI standard Z53.1–1967, ''Safety Colors for Marking Physical Hazards and the Identification of Certain Equipment,'' which § 1910.6 incorporated by reference in three places: §§ 1910.145(d)(2), Danger signs; 1910.145(d)(4), Caution signs; and 1910.145(d)(6), Safety instruction signs. However, as noted above, the Office of the Federal Register did not approve ANSI Z53.1–1967 for incorporation by reference under § 1910.6. Therefore, this NPRM would correct this oversight by incorporating that ANSI standard by reference under § 1910.6 after receiving approval from the Office of the Federal Register to do so.

Each of the three cited provisions of § 1910.145(d) specifies the colors employers must use for each type of sign, and requires that the signs meet the specifications in Table 1, ''Fundamental Specification of Safety Colors for CIE Standard Source 'C,' '' of ANSI Z53.1–1967. The NPRM would update each of these sections by referencing Table 1, ''Specification of the Safety Colors for CIE Illuminate C and the CIE 1931, 2° Standard Observer,'' of ANSI Z535.1–2006(R2011), ''Safety Colors,'' which it incorporates by reference. This addition would allow employers to comply with the 1967 version or the 2006(R2011) version of the cited ANSI standard.

(3) OSHA's general industry standard on pulp, paper, and paper board mills at § 1910.261 refers to ANSI Z35.1–1968, ''Specifications for Accident Prevention Signs,'' which § 1910.6(e)(59) incorporates by reference in two places. First, § 1910.261(c)(16) refers to this 1968 ANSI standard. The NPRM would update § 1910.261(c)(16) by incorporating ANSI Z535.2–2011, ''Environmental and Facility Safety Signs,'' by reference in § 1910.6(e)(60). This addition would allow employers to comply with the 1968 version or the 2011 version of the cited ANSI standard.

Second, § 1910.6(e)(59) incorporates Z35.1–1968, ''Specifications for Accident Prevention Signs,'' by reference in § 1910.261(a)(3)(xxiv). However, on June 18, 1998, as part of an OSHA rulemaking, the Agency removed subsection § 1910.261(a)(3)(xxiv) from the pulp, paper, and paper board mills standard, but did not remove the reference to § 1910.261(a)(3)(xxiv) in § 1910.6(e)(59). The NPRM would correct this oversight.

(4) OSHA's construction standard on accident prevention signs and tags, § 1926.200, refers to ANSI standards Z35.1–1968, ''Specifications for Accident Prevention Signs''; Z35.2–1968, ''Specifications for Accident Prevention Tags''; or Z53.1–1967, ''Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment,'' in five places discussed below.[4] In addition, as discussed below, § 1926.200 would incorporate by reference Part VI of the MUTCD, 1988 Edition, Revision 3.

The first reference to one of these old ANSI standards is in § 1926.200(b)(1), Danger signs, which refers to Figure G–1, which is identical to Figure 1 in ANSI Z35.1–1968, ''Specifications for Accident Prevention Signs.'' The second reference is in § 1926.200(c)(1), Caution signs, which refers to Figure G–2, which is identical to Figure 4 in the same ANSI standard. The NPRM would remove Figures G–1 and G–2 from § 1926.200(b)(1) and (c)(1), and update these provisions by referencing the appropriate figures from ANSI Z35.1–1968 and ANSI Z535.2–2011, ''Environmental and Facility Safety

[4] Although § 1926.200(c)(3) currently refers to ANSI Z53.1–1967, OSHA did not incorporate that ANSI standard by reference under § 1926.6. This NPRM, therefore, would correct this oversight by incorporating ANSI Z53.1–1967 by reference under § 1926.6.

Signs.'' These revisions, therefore, would give employers the option of using the figures from either ANSI standard.

The third reference to an old ANSI standard is in § 1926.200(c)(3), which refers to ANSI Z53.1–1967, ''Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment.'' This OSHA provision specifies the colors employers must use in caution signs, and requires that the signs meet the specifications in Table 1 of ANSI Z53.1–1967. This NPRM would update § 1926.200(c)(3) by adding a reference to Table 1 of ANSI Z535.1–2006(R2011), ''Safety Colors,'' the latest version of Z53.1–1967. This addition, therefore, would allow employers to use either Table 1 of Z53.1–1967 or Table 1 of Z535.1–2006(R2011).

The fourth reference to an old ANSI standard is in § 1926.200(h)(2), Accident prevention tags, which says that specifications for accident-prevention tags similar to the specifications in Table G–1 apply; OSHA based Table G–1 on Figures 1 to 4 in ANSI Z35.2–1968, ''Specifications for Accident Prevention Tags.'' The NPRM would remove Table G–1 from § 1926.200(h)(2), and update this provision by referencing Figures 1 to 4 of ANSI Z35.2–1968 and Figures 1 to 8 of Z535.5–2011, ''Safety Tags and Barricade Tapes (for Temporary Hazards).'' These revisions, therefore, would give employers the option of using the figures from either ANSI standard.

The fifth reference to the old ANSI standards is in § 1926.200(i), which refers to ANSI Z35.1–1968, ''Specifications for Accident Prevention Signs,'' and Z35.2–1968, ''Specifications for Accident Prevention Tags.'' Section 1926.200(i) requires employers to follow these two ANSI standards with respect to OSHA rules not specifically prescribed in 29 CFR 1926, subpart G. This NPRM would update § 1926.200(i) by adding Z535.2–2011, ''Environmental and Facility Safety Signs,'' and Z535.5–2011, ''Safety Tags and Barricade Tapes (for Temporary Hazards),'' the latest versions of the cited ANSI standards, as references. These additions would allow employers to comply with Z35.1–1968 or Z535.2–11 for signs, and Z35.2–1968 or Z535.5–11 for tags.

This NPRM also would update paragraph (g)(2) of § 1926.200 by removing the language referring to the Director of the Federal Register's approval for incorporation by reference of Part VI of the 1988 Edition, Revision 3, of the MUTCD, and adding a reference to § 1926.6 instead (i.e., this reference indicates such approval). Additionally, in an earlier rulemaking (*see* 75 FR 47906, 48132 (2010)), OSHA inadvertently removed Part VI of the MUTCD from § 1926.6. This NPRM would correct this oversight by returning the reference to Part VI of the MUTCD to § 1926.6; it also would remove the reference to § 1926.200(g)(2) as the incorporation-by-reference provision in § 1926.201(a) and § 1926.202, and replace it with a reference to § 1926.6.

In summary, OSHA believes, based on the discussion above under Background, that many general industry and construction employers currently comply with the ANSI signage requirements incorporated by reference in its existing signage standards, *i.e.,* ANSI Z35.1–1968, Z35.2–1968, and Z53.1–1967. Therefore, OSHA is proposing to retain these requirements in its signage standards. OSHA also determined that the latest editions of the ANSI signage standards, *i.e.,* Z535.1–2006(R2011), Z535.2–2011, and Z535.5–2011, provide at least as effective protection to employees as the old ANSI standards incorporated by reference in the Agency's signage standards. Accordingly, this NPRM would give employers the option of complying with the old or the new ANSI standards. Since employers could choose to comply with OSHA's existing signage standards, incorporating the new ANSI standards by reference would not increase the cost or burden of compliance.

IV. Procedural Determinations

A. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 65–78, is to assure, as far as possible, safe and healthful working conditions for all employees. 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654(b), 655(b). A safety or health standard is a standard that ''requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) of the OSH Act when a significant risk of material harm exists in the workplace and the proposed standard would substantially reduce or eliminate that workplace risk. *See Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607 (1980). OSHA has already determined that requirements specified by signage standards, including design requirements, are reasonably necessary or appropriate within the meaning of Section 652(8) (*see, e.g.,* 49 FR 49726, 49737 (1978); 51 FR 33251, 33251–33259 (1986)).

This NPRM would neither reduce employee protection nor alter an employer's obligations under the existing standards. Under this NPRM, employers would be able to continue to use the same signs and tags they are using currently to meet their compliance obligations under the existing standards' design-criteria requirements. This NPRM would provide employers with additional options for meeting the design-criteria requirements for signage protection. Therefore, this NPRM would not alter the substantive protection that employers must provide to employees or impose a new compliance burden on employers. Accordingly, OSHA need not, in this rulemaking, determine significant risk or the extent to which this NPRM would reduce that risk, as typically required by *Industrial Union Department.*

B. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

This NPRM is not economically significant within the context of Executive Order 12866, or a major rule under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act. In addition, this NPRM complies with Executive Order 13563. The rulemaking imposes no additional costs on any private-sector or public-sector entity, and does not meet any of the criteria for an economically significant or major rule specified by the Executive Order or relevant statutes.

This rulemaking would allow employers increased flexibility in choosing signage for the protection of their employees. This NPRM, however, would not require an employer to update or replace its signage solely as a result of this rule if the employer's current signage protection meets the revised standards. Because the NPRM imposes no costs, OSHA certifies that it would not have a significant economic impact on a substantial number of small entities.

C. OMB Review Under the Paperwork Reduction Act of 1995

This rulemaking does not impose new information-collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–30.

Accordingly, the Agency does not have to prepare an Information Collection Request in association with this rulemaking.

Members of the public may respond to this paperwork determination by sending their written comments to the Office of Information and Regulatory Affairs, Attn: OSHA Desk Officer (RIN 1218–AC77), Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. The Agency encourages commenters to submit these comments to the rulemaking docket, along with their comments on other parts of this NPRM. For instructions on submitting these comments and accessing the docket, *see* the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES**. OSHA, however, will not consider any comment received on this paperwork determination to be a ''significant adverse comment'' as specified above under the section titled Direct Final Rulemaking.

To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone (202) 693–2222.

D. Federalism

OSHA reviewed this NPRM in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Agencies must limit any such preemption to the extent possible.

Under Section 18 of the OSH Act, 29 U.S.C. 667, Congress expressly provides that states may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards (29 U.S.C. 667); OSHA refers to states that obtain Federal approval for such a plan as ''State-Plan states.'' Occupational safety and health standards developed by State-Plan states must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan states are free to develop and enforce under state law their own requirements for occupational safety and health standards.

While OSHA drafted this NPRM to protect employees in every state, Section 18(c)(2) of the OSH Act permits State-Plan states and U.S. territories to develop and enforce their own standards for signage protection provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this NPRM.

In summary, this NPRM complies with Executive Order 13132. In states without OSHA-approved state plans, this rulemaking limits state policy options in the same manner as other OSHA standards. In State-Plan states, this rulemaking does not significantly limit state policy options because, as explained in the following section, State-Plan states do not have to adopt any final standard developed from this NPRM.

E. State-Plan States

When Federal OSHA promulgates a new standard or amends an existing standard to make it more stringent, the 27 states or U.S. territories with their own OSHA-approved occupational safety and health plans must revise their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, *e.g.,* because an existing state standard covering this area is at least as effective in protecting workers as the new Federal standard or amendment. 29 CFR 1953.5(a). In this regard, the state standard must be at least as effective as the final Federal rule. State-Plan states must adopt the Federal standard or complete their own standard within six months of the publication date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than the existing standard, State-Plan states need not amend their standards, although OSHA may encourage them to do so. The following 21 states and 1 U.S. territory have OSHA-approved occupational safety and health plans that apply only to private-sector employers: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. In addition, Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved state plans that apply only to state and local government employees.

This NPRM would not impose any additional or more stringent requirements on employers compared to existing OSHA standards. This NPRM proposes to incorporate by reference three recent editions of the applicable national consensus standards in OSHA's existing signage protection standards. This NPRM would not require employers to update or replace their signage solely as a result of this rulemaking if their current signage meets the requirements of this NPRM. OSHA believes that adding the new references to ANSI Z535.1–2006(R2011), ANSI Z535.2–2011, and ANSI Z535.5–2011, while retaining the current references to ANSI Z35.1–1968, Z35.2–1968, and Z53.1–1967, would impose no additional compliance obligations on employers because employers can continue using their existing signage and, when necessary, update their signage and not be out of compliance.

Therefore, this NPRM does not require action under 29 CFR 1953.5(a), and State-Plan states do not need to adopt this rule or show OSHA why such action is unnecessary. However, to the extent these State-Plan states have the same standards as the OSHA standards affected by this NPRM, OSHA encourages them to adopt the amendments that may result from this rulemaking.

F. Unfunded Mandates Reform Act of 1995

OSHA reviewed this NPRM according to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501–1571, and Executive Order 12875, 58 FR 58093 (1993). 75 FR 48130; 2010. As discussed above in Section IV.B (''Final Economic Analysis and Regulatory Flexibility Certification'') of this preamble, OSHA determined that this NPRM imposes no additional costs on any private-sector or public-sector entity. Accordingly, this NPRM requires no additional expenditures by either public or private employers.

As noted above under Section IV.E (''State-Plan States'') of this preamble, OSHA standards do not apply to state or local governments except in states that elected voluntarily to adopt an OSHA-approved state plan. Consequently, this NPRM does not meet the definition of a ''Federal intergovernmental mandate'' (*see* Section 421(5) of the UMRA, 2 U.S.C. 658(5)). Therefore, for the purposes of the UMRA, OSHA certifies that this NPRM does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than $100 million in any year.

G. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this NPRM in accordance with Executive Order 13175, 65 FR 67249 (2000), and determined that it does not have ''tribal implications'' as defined in that order. This NPRM does not have substantial direct effects 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.

H. Consultation With the Advisory Committee on Construction Safety and Health

Under 29 CFR parts 1911 and 1912, OSHA must consult with the Advisory Committee on Construction Safety and Health (''ACCSH'' or ''the Committee''), established pursuant to Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701–3708, in setting standards for construction work. Specifically, § 1911.10(a) requires the Assistant Secretary to provide ACCSH with a proposed rule (along with pertinent factual information), and give the Committee an opportunity to submit recommendations. *See, also,* § 1912.3(a) (''[W]henever occupational safety or health standards for construction activities are proposed, the Assistant Secretary [for Occupational Safety and Health] shall consult the Advisory Committee'').

On March 18, 2013, OSHA presented to the ACCSH a draft of this NPRM, as well as a table comparing the current regulatory text with the proposed regulatory text for the provisions of 29 CFR 1926.200 subject to this rulemaking. OSHA explained that it was proposing to update these provisions by allowing employers to comply with either the older ANSI standards, Z35.1–1968, Z35.2–1968, and Z53.1–1967, or the latest ANSI standards, Z535.1–006(R2011), Z535.2–2011, and Z535.5–2011. The ACCSH subsequently recommended that OSHA proceed with the proposed rule to update § 1926.200 (a transcript of these proceedings is available at Docket No. OSHA–2013–0005–0007, pp. 41–46). ACCSH members also suggested that OSHA consider replacing the illustrations of the old signs and tags it is removing from § 1926.200(b)(1), (c)(1), and (h)(2) with the new ones, or a combination of the old ones and the new ones. *Id.* at 21–23. OSHA will consider this suggestion for a future rulemaking.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, authorized the preparation of this NPRM. OSHA is issuing this NPRM pursuant to 29 U.S.C. 653, 655, and 657; 5 U.S.C. 553; 40 U.S.C. 3701–3708; Secretary of Labor's Order 1–2012, 77 FR 3912 (2012); and 29 CFR part 1911.

List of Subjects in 29 CFR Parts 1910 and 1926

Construction, General industry, Occupational safety and health, Safety, Signs, Tags.

Signed at Washington, DC, on June 5, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Proposed Amendments to Standards

For the reasons stated above in the preamble, the Occupational Safety and Health Administration is proposing to amend 29 CFR parts 1910 and 1926 as follows:

PART 1910—[AMENDED]

Subpart A—[Amended]

■ 1. The authority citation for subpart A of part 1910 continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable.

Sections 1910.6, 1910.7, 1910.8 and 1910.9 also issued under 29 CFR 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Public Law 106–113 (113 Stat. 1501A–222); Pub. L. 11–8 and 111–317; and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

■ 2. Amend § 1910.6 as follows:

■ a. Revise paragraphs (e)(59) and (e)(65);

■ b. Redesignate paragraphs (e)(66) through (e)(77) as paragraphs (e)(68) through (e)(79); and

■ c. Add paragraphs (e)(66) and (e)(67).

§ 1910.6 Incorporation by reference.

* * * * *

(e) * * *

(59) ANSI Z35.1–1968, Specifications for Accident Prevention Signs; IBR approved for § 1910.261(c). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1–877–413–5184; Web site: *www.global.ihs.com.*

* * * * *

(65) USAS Z53.1–1967 (also referred to as ANSI Z53.1–1967), Safety Color Code for Marking Physical Hazards, ANSI approved October 9, 1967; IBR approved for § 1910.97(a) and 1910.145(d). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1–877–413–5184; Web site: *www.global.ihs.com.*

(66) ANSI Z535.1–2006(R2011), Safety Colors, reaffirmed July 19, 2011; IBR approved for §§ 1910.97(a) and 1910.145(d). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209–1762; telephone: 703–525–1695; fax: 703–528–2148; Web site: *www.safetyequipment.org.*

(67) ANSI Z535.2–2011, Environmental and Facility Safety Signs, published September 15, 2011; IBR approved for § 1910.261(c). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209–1762; telephone: 703–525–1695; fax: 703–528–2148; Web site: *www.safetyequipment.org.*

* * * * *

Subpart G—[Amended]

■ 3. Revise the authority citation for subpart G of part 1910 to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 50017), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 4. Amend § 1910.97 by revising paragraph (a)(3)(ii) to read as follows:

§ 1910.97 Nonionizing radiation.

* * * * *

(a) * * *

(3) * * *

(ii) ANSI Z53.1–1967 or ANSI Z535.1–2006(R2011), incorporated by reference in § 1910.6, is for use for color specification. All lettering and the border shall be of aluminum color.

* * * * *

Subpart J—[Amended]

■ 5. Revise the authority citation for subpart J of part 1910 to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR

35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

■ 6. Amend § 1910.145 by revising paragraphs (d)(2), (d)(4), and (d)(6) to read as follows:

§ 1910.145 Specifications for accident prevention signs and tags.

* * * * *

(d) * * *

(2) *Danger signs.* The colors red, black, and white shall be those of opaque glossy samples as specified in Table 1, ''Fundamental Specification of Safety Colors for CIE Standard Source 'C,' '' of ANSI Z53.1–1967 or in Table 1, ''Specification of the Safety Colors for CIE Illuminate C and the CIE 1931, 2° Standard Observer,'' of ANSI Z535.1–2006(R2011), incorporated by reference in § 1910.6.

* * * * *

(4) *Caution signs.* The standard color of the background shall be yellow; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1–1967 or Table 1 of ANSI Z535.1–2006(R2011), incorporated by reference in § 1910.6.

* * * * *

(6) *Safety instruction signs.* The standard color of the background shall be white; and the panel, green with white letters. Any letters used against the white background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1–1967 or in Table 1 of ANSI Z535.1–2006(R2011), incorporated by reference in § 1910.6.

* * * * *

Subpart R—[Amended]

■ 7. Revise the authority citation for subpart R of part 1910 to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 5–2007 (72 FR 31159)), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 8. Amend § 1910.261 by revising paragraph (c)(16) to read as follows:

§ 1910.261 Pulp, paper, and paperboard mills.

* * * * *

(c) * * *

(16) *Signs.* When conveyors cross walkways or roadways in the yards, the employer must erect signs reading ''Danger—Overhead Conveyor'' or an equivalent warning, in accordance with ANSI Z35.1–1968 or ANSI Z535.2–2011, incorporated by reference in § 1910.6.

* * * * *

PART 1926—[AMENDED]

Subpart A—[Amended]

■ 9. The authority citation for subpart A of part 1926 continues to read as follows:

Authority: 40 U.S.C. 333; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 10. Amend § 1926.6 as follows:

■ a. Revise paragraph (h)(24);

■ b. Redesignate paragraphs (h)(27) through (h)(30) as (h)(31) through (h)(34) and paragraph (u)(1) as (u)(2);

■ c. Add paragraphs (h)(27) through (h)(30), and (u)(1); and

■ d. Revise newly redesignated paragraph (u)(2).

§ 1926.6 Incorporation by reference.

* * * * *

(h) * * *

(24) ANSI Z35.1–1968, Specifications for Accident Prevention Signs; IBR approved for § 1926.200(b), (c), and 1 (i). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1–877–413–5184; Web site: *www.global.ihs.com.*

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(27) USA Z53.1–1967 (also referred to as ANSI Z53.1–1967), Safety Color Code for Marking Physical Hazards, ANSI approved October 9, 1967; IBR approved for § 1926.200(c). Copies available for purchase from the IHS Standards Store, 15 Inverness Way East, Englewood, CO 80112; telephone: 1–877–413–5184; Web site: *www.global.ihs.com.*

(28) ANSI Z535.1–2006(R2011), Safety Colors, reaffirmed July 19, 2011; IBR approved for § 1926.200(c). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209–1762; telephone: 703–525–1695; fax: 703–528–2148; Web site: *www.safetyequipment.org.*

(29) ANSI Z535.2–2011, Environmental and Facility Safety Signs, published September 15, 2011; IBR approved for § 1926.200(b), (c), and (i). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209–1762; telephone: 703–525–1695; fax: 703–528–2148; Web site: *www.safetyequipment.org.*

(30) ANSI Z535.5–2011, Safety Tags and Barricade Tapes (for Temporary Hazards), published September 15, 2011, including Errata, November 14, 2011; IBR approved for § 1926.200(h) and (i). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209–1762; telephone: 703–525–1695; fax: 703–528–2148; Web site: *www.safetyequipment.org.*

* * * * *

(u) * * *

(1) Manual on Uniform Traffic Control Devices (MUTCD), Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operation, 1988 Edition, Revision 3, September 3, 1993; IBR approved for §§ 1926.200(g), 1926.201(a), and 1926.202. Electronic copies of the MUTCD, 1988 Edition, Revision 3, are available for downloading at *http://www.osha.gov/doc/highway_workzones/mutcd/index.html.*

(2) Manual on Uniform Traffic Control Devices (MUTCD), Millennium Edition, Dec. 2000; IBR approved for §§ 1926.200(g)), 1926.201(a), and 1926.202. Electronic copies of the MUTCD 2000 are available for downloading at *http://mutcd.fhwa.dot.gov/kno-millennium_12.18.00.htm.*

* * * * *

Subpart G—[Amended]

■ 11. Revise the authority citation for subpart G of part 1926 to read as follows:

Authority: 40 U.S.C. 333; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 12. Amend § 1926.200 by revising paragraphs (b)(1), (c)(1), (c)(3), (g)(2), (h)(2), and (i) to read as follows:

§ 1926.200 Accident prevention signs and tags.

* * * * *

(b) *Danger signs.* (1) Danger signs shall be used only where an immediate hazard exists, and shall follow the specifications provided in Figure 1 of ANSI Z35.1–1968 or in Figure 2 of ANSI Z535.2–2011, incorporated by reference in § 1926.6.

* * * * *

(c) *Caution signs.* (1) Caution signs shall be used only to warn against potential hazards or to caution against unsafe practices, and shall follow the specifications provided in Figure 4 of ANSI Z35.1–1968 or in Figure 2 of ANSI Z535.2–2011, incorporated by reference for the sections specified in § 1926.6.

* * * * *

(3) The standard color of the background shall be yellow; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1–1967 or in Table 1 of ANSI Z535.1–2006(R2011), incorporated by reference in § 1926.6.

* * * * *

(g) * * *

(2) All traffic control signs or devices used for protection of construction workers shall conform to Part VI of the MUTCD, 1988 Edition, Revision 3, or Part VI of the MUTCD, Millennium Edition, incorporated by reference in § 1926.6.

(h) * * *

(2) For accident prevention tags, employers shall follow specifications that are similar to those in Figures 1 to 4 of ANSI Z35.2–1968 or Figures 1 to 8 of ANSI Z535.5–2011, incorporated by reference in § 1926.6.

(i) *Additional rules.* ANSI Z35.1–1968, ANSI Z535.2–2011, ANSI Z35.2–1968, and ANSI Z535.5–2011, incorporated by reference in § 1926.6, contain rules in addition to those specifically prescribed in this subpart. The employer shall comply with ANSI Z35.1–1968 or ANSI Z535.2–2011, and ANSI Z35.2–1968 or Z535.5–2011, with respect to such additional rules.

■ 13. Amend § 1926.201 by revising paragraph (a) to read as follows:

§ 1926.201 Signaling.

(a) *Flaggers.* Signaling by flaggers and the use of flaggers, including warning garments worn by flaggers, shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3, or the Millennium Edition), incorporated by reference in § 1926.6.

* * * * *

■ 14. Revise § 1926.202 to read as follows:

§ 1926.202 Barricades.

Barricades for protection of employees shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3, or the Millennium Edition), incorporated by reference in § 1926.6.

[FR Doc. 2013–13910 Filed 6–12–13; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2013–0295]

RIN 1625–AA08

Special Local Regulation; Christmas Boat Parade, San Juan Harbor; San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposes to establish a special local regulation on the waters of San Juan Harbor in San Juan, Puerto Rico during the Christmas Boat Parade, a Boat Parade. The event is scheduled to take place on Saturday, December 14, 2013. Approximately 35 boats are anticipated to participate in the Boat Parade, and no spectator vessels are anticipated to be present during the event. The special local regulation is necessary to provide for the safety of life on the navigable waters of the United States during the event. The special local regulation establishes a Parade Route, where all persons and vessels, except those persons and vessels who are participating in the parade, will be prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before July 15, 2013.

Requests for public meetings must be received by the Coast Guard on or before June 20, 2013.

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

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

(2) *Fax:* 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Efrain Lopez, Sector San Juan Prevention Department, Coast Guard; telephone (787) 289–2097, email *efrain.lopez1@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

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.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *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, 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 email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2013–0295 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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 comments 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.

2. 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,* type the docket number USCG–2013–0295 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. 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.

3. 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).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one or before June 20, 2013 using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The current regulations under 33 CFR 100 address safety for reoccurring marine events. This marine event does not appear in the current regulations; however, as it is a regulation to provide effective control over regattas and marine parades on the navigable waters of the United States so as to ensure safety of life in a regatta or marine parade, this marine event needs to be temporarily added.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Christmas Boat Parade.

D. Discussion of Proposed Rule

On December 14, 2013, Club Nautico de San Juan is sponsoring the Christmas Boat Parade. The event will be held on the waters of San Juan Harbor in San Juan, Puerto Rico. Approximately 35 boats are anticipated to participate in the event, and it is not anticipated that there will be any spectator vessels present.

The proposed rule would establish a special local regulation that will encompass certain waters of San Juan Harbor in San Juan, Puerto Rico. The special local regulation will be enforced from 5 p.m. until 8 p.m. on December 14, 2013. The special local regulation will establish a Parade Route, where all persons and vessels, except those persons and vessels participating in the parade will be prohibited from entering, transiting through, anchoring in, or remaining within the area unless authorized by the Captain of the Port San Juan or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the Parade Route by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or through a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the Parade Route is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only three hours; (2) although non-participant persons and vessels will not be able to enter, transit through, anchor in, or remain within the parade route without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the Parade Route during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of San Juan Harbor encompassed within the special local regulation from 5 p.m. until 8 p.m. on December 14, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental

jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

This proposed rule 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.

10. Protection of Children From Environmental Health Risks

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.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the creation of a special local regulation issued in conjunction with a regatta or marine parade to ensure the safety of race participants, participant vessels, spectators, and the general public during the event. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35T07–0295 to read as follows*: § § 100.35T07–0295 Special Local Regulation; Christmas Boat Parade, San Juan Harbor; San Juan, PR*

(a) *Regulated Area.* The following regulated area is established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Parade Route.* All waters of San Juan Harbor within a moving zone that will begin at Club Nautico de San Juan, move towards El Morro and then return, to Club Nautico de San Juan; this zone will at all times extend 50 yards in front of the lead vessel, 50 yards behind the last vessel, and 50 yards out from all participating vessels. All persons and vessels, except those persons participating in the parade, are prohibited from entering, transiting through, anchoring in, or remaining within the parade route.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels, except those persons participating in the parade, are prohibited from entering, transiting through, anchoring in, or remaining within the parade route.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port San Juan by telephone at 787–289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the

Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

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

(d) *Enforcement Date.* This rule will be enforced from 5 p.m. until 8 p.m. on December 14, 2013.

Dated: April 23, 2013.

D.W. Pearson,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. 2013–13994 Filed 6–12–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2013–0112]

RIN 1625–AA08

Special Local Regulation; Long Beach Regatta, Powerboat Race, Atlantic Ocean, Long Beach, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is proposing a temporary special local regulation on the navigable waters of the Atlantic Ocean off Long Beach, NY during the Long Beach Regatta Powerboat Race scheduled for August 24–25, 2013. This action is necessary to provide for the safety of life of participants and spectators during this event. Entering into, transiting through, remaining, anchoring or mooring within these regulated areas would be prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound.

DATES: Comments and related material must be received by the Coast Guard on or before July 15, 2013.

Requests for public meetings must be received by the Coast Guard on or before June 24, 2013.

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

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

(2) *Fax:* 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4428, *Scott.A.Baumgartner@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

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.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *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, 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 email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2013–0112] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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 comments 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.

2. 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,* type the docket number (USCG–2013–0112) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. 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.

3. 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).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES** on or before July 5, 2013. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The Great South Bay Racing Inc. has sponsors a powerboat racing event each year. The location and name has changed several time over the past five years. The following rulemaking listed

in ascending order are all associated with this evolving event.

On September 3, 2008 the Coast Guard published a final rule entitled, Safety Zone; Patchogue Bay, Patchogue, NY, in the **Federal Register** (73 FR 51367) establishing a safety zone on Patchogue Bay, Patchogue, NY in 33 Code of Federal Regulations (CFR) 165.158 for the Battle on the Bay Powerboat Race. No comments or requests for public meeting were received during the rulemaking.

On July 6, 2011 the Coast Guard published a temporary final rule entitled, Special Local Regulations & Safety Zones; Marine Events in Captain of the Port Long Island Sound Zone in the **Federal Register** (76 FR 39292) establishing a special local regulation on the Great South Bay, Islip, NY in 33 CFR 100.T01–0550 for the Battle on the Bay Powerboat Race.

On February 10, 2012 the Coast Guard published a final rule entitled, ''Special Local Regulations; Safety and Security Zones; Recurring Events in Captain of the Port Long Island Sound Zone'' in the **Federal Register** (77 FR 6954) establishing a special local regulation on Patchogue Bay, Patchogue, NY in 33 CFR 100.100 for the Battle on the Bay Powerboat race. No comments or request for a public meeting were received during the rulemaking process.

C. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1233 and Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory special local regulations.

This temporary rule establishes a special local regulation in order to provide for the safety of life on navigable waters during the Long Beach Regatta Powerboat Race.

D. Discussion of Proposed Rule

On Saturday August 24, 2013 and Sunday August 25, 2013 from 7 a.m. until 7 p.m. Great South Bay Racing Inc. will be sponsoring the Long Beach Regatta Powerboat Race, an offshore powerboat racing regatta. The event will be held on the Atlantic Ocean off Long Beach, NY and will feature six classes of offshore powerboats including vessels from the Extreme Class which can reach speeds exceeding 200 miles per hour. The sponsor expects a minimum of 5,000 spectators for this event with a portion of them expected to view the event from recreational vessels.

The COTP Long Island Sound has determined the combination of increased numbers of recreation vessels, and vessels racing at high speeds has the potential to result in serious injuries or fatalities. This special local regulation proposes temporary regulated areas to restrict vessel movement around the location of the regatta to reduce the risks associated with racing vessels and congested waterways. For these reasons the Coast Guard is proposing three temporary regulated areas on the Atlantic Ocean, from August 24, 2013 through August 25, 2013:

(1) *Regatta Course Area.* This area is for the exclusive use of registered regatta participants and safety, support and official vessels.

(2) *No Entry Area.* Buffer zone separating racing vessel from spectators.

(3) *Spectator Viewing Area.* This area is for the exclusive use of spectator vessels. The sponsor will mark this area.

The geographic locations of these regulated areas and specific requirements of this rule are contained in the regulatory text.

Because a number of spectator vessels are expected to congregate around the location of this event, these regulated areas are needed to protect both spectators and participants from the safety hazards created by them including powerboats traveling at high speeds and congested waterways. During the enforcement periods, persons and vessels are prohibited from entering, transiting through, remaining, anchoring or mooring within the regulated areas unless stipulated otherwise or specifically authorized by the COTP or the designated representative. The Coast Guard may be assisted by other federal, state and local agencies in the enforcement of these regulated areas.

The Coast Guard determined that these regulated areas will not have a significant impact on vessel traffic due to their temporary nature and the fact that vessels are allowed to transit the navigable waters outside of the regulated areas.

The Coast Guard has ordered special local regulations and safety zones for this event when it was held in different locations and has received no public comments or concerns regarding the impact to waterway traffic. Advanced public notifications will be made to the local maritime community through all appropriate means which may include but are not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: The regulated areas are of limited duration and vessels may transit the navigable waterways outside of the regulated areas. Persons or vessels requiring entry into the regulated areas may be authorized to do so by the COTP Long Island Sound or designated representative.

Advanced public notifications will also be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas August 24 and 25, 2013 from 7 a.m. until 7 p.m.

This temporary special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated areas are of short duration, vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas, and vessels requiring entry into the regulated areas may be authorized to do so by the COTP Long Island Sound or designated representative. Additionally, before the effective period, public notifications will be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners as well as Broadcast Notice to Mariners.

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.

3. 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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

This proposed rule 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.

10. Protection of Children from Environmental Health Risks

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.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recording requirements, Waterways.

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233

■ 2. Add § 100.35T01–0112 to read as follows:

§ 100.35T01–0112 Special Local Regulation; Long Beach Regatta, Powerboat Race, Atlantic Ocean, Long Beach, NY.

(a) *Regulated Areas.* All coordinates are North American Datum 1983 (NAD 83).

(1) ''Regatta Course Area'': All navigable waters of the Atlantic Ocean off Long Beach, NY within the following boundaries: Beginning at point ''A'' at position 40°34′15.84″ N, 073°36′03.82″ W, then west to point ''B'' at position 40°34′06.68″ N, 073°40′09.27″ W, then north to point ''C'' at position 40°34′48.56″ N, 073°40′08.70″ W, then east to point ''D'' at position 40°34′53.33″ N, 073°36′14.93″ W, then south to the point of origin point ''A''.

(2) ''No Entry Area'': A buffer zone comprising all navigable waters of the Atlantic Ocean surrounding the ''Regatta Course Area'' extending from the south border 700 feet outwards, from the east and west boarders 1000 feet outwards and from the north boarder extending to the shoreline.

(3) ''Spectator Viewing Area'': All navigable waters of the Atlantic Ocean off Long Beach, NY within the following

boundaries: Beginning at point ''A'' at position 40°34′4.56″ N, 073°35′52.72″ W, then west to point ''B'' at position 40°33′54.04″ N, 073°38′34.08″ W, then north to point ''C'' at position 40°34′00.42″ N, 073°38′34.33″ W, then east to point ''D'' at position 40°34′10.07″ N, 073°35′56.87″ W, then south to the point of origin point ''A''.

(b) *Special Local Regulations.*

(1) In accordance with the general regulations found in § 100.35 of this part, entering into, transiting through, anchoring or remaining within the regulated areas is prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound, or designated representative.

(2) The following persons and vessels are authorized by the COTP Long Island Sound to enter areas of this special local regulation:

(i) ''Regatta Course Area'': Registered regatta participants, safety, support, and official vessels.

(ii) ''No Entry Area'':

(A) Registered regatta participants, safety, support, and official vessels may transit to or from the ''Regatta Course Area'' at a speed of 25 knots or less when racing is halted.

(B) Swimmers may utilize all shoreline waters up to 100 feet from shore (i.e. end of the jetties).

(iii) ''Spectator Viewing Area'': Spectator vessels engaged in viewing the regatta.

(3) All persons and vessels shall comply with the instructions of the COTP Long Island Sound or designated representative. These designated representatives are comprised of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means the operator of a vessel shall proceed as directed.

(4) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas must request authorization from the COTP Long Island Sound or the designated representative. The COTP Long Island Sound may be contacted by telephone at (203) 468–4401 or via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the COTP Long Island Sound or designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Long Island Sound or designated representative.

(5) The Coast Guard will provide notice of the regulated areas prior to the event through appropriate means, which may include but is not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

(c) *Enforcement Period.* This section will be enforced from 7:00 a.m. until 7:00 p.m. on both August 24, 2013 and August 25, 2013.

Dated: May 9, 2013.

J.M. Vojvodich,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 2013–13993 Filed 6–12–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0385; FRL–9823–9]

Approval and Promulgation of Implementation Plans; Florida; Approval of Revision to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a correction to the Florida State Implementation Plan (SIP) for the State of Florida to remove a provision entitled ''Synthetic Organic Fiber Production.'' EPA has determined that this provision relating to State rule 62–296.413, was erroneously incorporated into the SIP. EPA is proposing to remove this rule from the approved Florida SIP because the rule is not related to the attainment and maintenance of the national ambient air quality standards (NAAQS).

DATES: Written comments must be received on or before July 15, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0385, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-Mail: R4-RDS@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2012–0385,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0385. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW.,

Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9222. Ms. Sheckler can be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Analysis of State Rule and Clean Air Act (CAA or Act) Requirements
III. Proposed Action
IV. Statutory and Executive Order Review

I. Background

The first significant amendments to the CAA occurred in 1970 and 1977. Following these amendments, a large number of SIPs were submitted to EPA to fulfill new federal requirements. In many cases, states and districts submitted their entire programs, including many elements not required pursuant to the Act. In the 1980's and early 1990's, many states revised their regulations to simplify them through recodification and to correct regulations that were submitted as a part of the first programs submitted that included elements that did not pertain to attainment of the NAAQS.

EPA records indicate that a November 23, 1992, SIP revision from Florida was approved on October 20, 1994 (59 FR 52916). However, the November 23, 1992, SIP did not include a revision to incorporate the rule entitled ''Synthetic Organic Fiber Production,'' 62–296.413 into the SIP. On December 21, 1994, and on April 15, 1996, the State provided submissions which included miscellaneous revisions and the recodification of the Florida Administrative Code (F.A.C.). F.A.C. 62–296.413 was part of Florida's recodification and was included in these State submittals among other revisions; however, as mentioned above, rule 62–296.413 was never officially submitted for incorporation into the SIP. When EPA took action on June 16, 1999 (64 FR 32346) to approve the recodification and miscellaneous revisions and also to revise the format of 40 CFR part 52 for materials submitted by Florida that are incorporated by reference (IBR) into the SIP, EPA inadvertently incorporated rule 62–296.413 into the regulatory text.

II. Analysis of State Rule and Clean Air Act (CAA or Act) Requirements

The rule entitled ''Synthetic Organic Fiber Production,'' 62–296.413, was originally numbered subsection 17–2.600(13), and was adopted with a state effective date of July 9, 1989, for the sole purpose of controlling acrylonitrile emissions from synthetic organic fiber production facilities in northwest Florida. The rule was only concerned with emissions of toxic air pollutants and not attainment or maintenance of any NAAQS. The rule was in an April 15, 1996, SIP submission along with all other rules that had been simultaneously amended. However, it was not submitted for EPA's approval and incorporation into the SIP. EPA's approval of this provision into the Florida SIP was in error, and EPA is, therefore, proposing to remove the provision from the approved SIP under the authority of section 110(k)(6) of the Act.

Section 110(k)(6) of the Act provides that, whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision was in error, the Administrator may in the same manner as the approval, disapproval or promulgation revise such action as appropriate without requiring further submission from the State. Such determination and the basis thereof must be provided to the state and public.

III. Proposed Action

For the reasons stated above in, EPA has found that its prior approval of F.A.C. 62–296.413 into the SIP was in error. Consequently, in order to correct this error, EPA is proposing to remove 62–296.413, from the approved Florida SIP pursuant to section 110(k)(6) of the Act and to codify this deletion by revising the appropriate paragraph under 40 CFR part 52, subpart K, Section 52.520 (Identification of Plan).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 F43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: June 3, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–14076 Filed 6–12–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3900, 3920, and 3930

[LLWO–3200000. L13100000.PP00000 L.X.EMOSHL000.241A]

RIN 1004–AE28

Oil Shale Management—General

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Bureau of Land Management (BLM) is reopening the comment period for the proposed rule to amend the BLM's commercial oil shale regulations that published in the **Federal Register** on March 27, 2013. The 60-day comment period for the proposed rule ended on May 28, 2013. This notice reopens the comment period for 30 days.

DATES: The comment period for the proposed rule published March 27, 2013, at 78 FR 18547, is reopended. Send your comments so that they reach the BLM on or before July 15, 2013. The BLM will not necessarily consider any comments received after the above date or comments delivered to an address other than those listed in **ADDRESSES** in making its decision on the final rule.

ADDRESSES: Please submit comments on the proposed rule using one of the following: Mail: Director (630) Bureau of Land Management, U.S. Department of the Interior, Mail Stop 2143LM, 1849 C St. NW., Washington, DC 20240, Attention: 1004–AE28. Personal or messenger delivery: U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134 LM, Attention: Regulatory Affairs, Washington, DC 20003. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions at this Web site.

FOR FURTHER INFORMATION CONTACT: Mitchell Leverette, Chief, Division of Solid Minerals, at (202) 912–7113 for issues related to the BLM's commercial oil shale leasing program or Ian Senio, Chief, Division of Regulatory Affairs at (202) 912–7440 for regulatory process issues. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week to contact the above individuals.

SUPPLEMENTARY INFORMATION:

I. Background

On March 27, 2013, the BLM published a proposed rule (78 FR 18547) to amend the BLM's commercial oil shale regulations to address concerns about the royalty system in existing regulations and to provide more detail to the environmental protection requirements. The 60-day comment period for the proposed rule ended on May 28, 2013.

The BLM has received requests from interested parties asking for an extension of the comment period. Each of the requests expressed the need for additional time to conduct a comprehensive review of the proposed regulatory revisions and potential impacts of the rule. The BLM has considered the requests and by this notice, the comment period is reopened for an additional 30 days. Please do not resubmit comments previously submitted to BLM during the comment period that closed on May 28, 2013.

II. Request for 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 recommended change. Where possible, comments should reference the specific section or paragraph of the proposed rule that the comment is addressing. The BLM need not consider or include in the Administrative Record for the proposed rule comments that it receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**). Comments, including names and street addresses of respondents, will be available for public review at the U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134 LM, Washington, DC 2003 during regular hours (7:45 a.m. to 4:15 p.m.) Monday through Friday, except holidays. They also will be available at the eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions at the Web site.

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

Date: June 6, 2013.

Tommy P. Beaudreau,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 2013–14028 Filed 6–12–13; 8:45 am]

BILLING CODE 4310–84–P

Notices

Federal Register

Vol. 78, No. 114

Thursday, June 13, 2013

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

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Fish and Wildlife Service

Coeur d'Alene Basin Restoration Plan, Kootenai, Shoshone and Benewah Counties, Idaho

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDOI; Fish and Wildlife Service, USDOI.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the United States Department of the Interior (USDOI), United States Department of Agriculture (USDA), Coeur d'Alene Indian Tribe (Tribe), and the State of Idaho (State) intend to prepare an Environmental Impact Statement (EIS) and by this notice are announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for NEPA analysis. Comments and input concerning the scope of the analysis must be received by August 12, 2013. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the project Web site ''*www.restorationpartnership.org*''. In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS. The Draft EIS is expected in May, 2014 and the Final EIS is expected in October, 2014.

ADDRESSES: You may submit comments related to the Coeur d'Alene Basin Restoration Plan by any of the following methods:

- *Web site: www.restorationpartnership.org.*
- *Email: input@restorationpartnership.org.*
- *Mail:* Restoration Partnership, 424 Sherman Ave, Suite 306, Coeur d'Alene, ID 83814.
- *Fax:* 1 (208) 667–0919.

FOR FURTHER INFORMATION CONTACT: Caj Matheson, Communications Specialist, 424 Sherman Ave, Suite 306, Coeur d'Alene, ID 83814; Email: *caj@restorationpartnership.org;* Phone: (208) 582–4080.

Individuals who use telecommunication devices for the deaf, hard-of-hearing, or speech disabled (Teletypewriter (TTY)/ Telecommunications Device for the Deaf (TDD)/Voice relay) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 24 hours a day, 365 days per year.

SUPPLEMENTARY INFORMATION: For more than 100 years the Coeur d'Alene Basin (Basin), located in the Northern Idaho counties of Shoshone, Kootenai, and Benewah, has been one of the most productive silver, lead, and zinc mining areas in the United States. The majority of mining and mineral processing in the Basin occurred along the South Fork of the Coeur d'Alene River and its tributaries. The wastes generated by these operations contain metals, including lead, zinc, cadmium, and arsenic. A significant portion of these wastes were discharged directly into the Coeur d'Alene River and tributaries causing injury to natural resources.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund,'' Title 42 United States Code [U.S.C.] Section 9601 et seq.) provides a mechanism for addressing the nation's hazardous waste sites: States, tribes, and the federal government may take legal action against polluters for the cleanup and restoration of sites. CERCLA provides for the designation of ''natural resource trustees,'' who are federal, state, or tribal authorities who represent the public interest in natural resources. These trustees may seek monetary damages from polluters for injury, destruction, or loss of natural resources resulting from releases of hazardous substances. These damages, which are distinct from cleanup costs, must be used by the natural resource trustees to restore, replace, rehabilitate, or acquire the equivalent of the natural resources that have been injured.

As a result of settlements and other legal findings, funds were received by the federal government, the Coeur d'Alene Indian Tribe, and the state of Idaho for two main purposes: (1) Clean-up of contamination (remediation); and (2) restoration of injured natural resources (waterfowl, fish, etc.). Responsibility for restoration lies with the trustees. Restoration activities will be coordinated closely with the remediation conducted by the U.S. Environmental Protection Agency (EPA).

Purpose and Need for Action

The purpose of the proposed action is restoration of the natural resources and services injured as a result of the release of mining related hazardous substances in the Basin. As discussed above, natural resources in the Basin have been injured due to the release of mining related hazardous substances.

Under CERCLA, damages recovered from parties responsible for natural resource injuries are used by the trustees ''to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources'' [42 U.S.C. 9607(f)(1)]. Restoration activities implemented by the trustees are typically subject to the requirements of the National Environmental Policy Act (NEPA) [42 U.S.C. 4321].

Proposed Action

The proposed action of this EIS is to adopt a restoration plan to coordinate and implement projects that will restore the health, productivity, and diversity of injured natural resources and the services they provide in the Basin.

Lead and Cooperating Agencies

Joint Lead Agencies are: Fish and Wildlife Service, USDOI; Bureau of Land Management, USDOI; Forest Service, USDA; COEUR D'ALENE INDIAN TRIBE; Department of Environmental Quality, IDAHO; Department of Fish and Game, IDAHO.

Responsible Officials

Regional Director, Region 1, U.S. Fish and Wildlife Service
Idaho State Director, Bureau of Land Management
Regional Forester, Region 1, U.S. Forest Service
Director, Coeur d'Alene Tribal Department of Natural Resources
Director, Idaho Department of Environmental Quality
Director, Idaho Department of Fish and Game

Nature of Decision To Be Made

The Trustees will adopt a restoration plan that will coordinate and implement projects to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources in the Basin and the services they provide.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIS. Further information on how and when input can be provided is specified in the **ADRESSESS** and **DATES** sections of this notice. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: June 3, 2013.

Robyn Thorson,

Regional Director, Region 1, Authorized Official for the U.S. Department of Interior, U.S. Fish and Wildlife Service and Bureau of Land Management.

Dated: June 6, 2013.

Faye L. Krueger,

Regional Forester, Region 1, Authorized Official for U.S. Department of Agriculture, Forest Service.

[FR Doc. 2013–14032 Filed 6–12–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Dixie Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

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 Dixie Resource Advisory Committee will meet Tuesday, June 25, 2013 at 1:00 p.m. in Cedar City, Utah for a business meeting. The business meeting is open to the public.

DATES: June 25, 2013.

ADDRESSES: The meeting location is the Dixie National Forest Supervisor's Office, located at 1789 North Wedgewood Lane, Cedar City, Utah 84721.

FOR FURTHER INFORMATION CONTACT: Janice Minarik, Dixie RAC Coordinator, at (435) 865–3794.

SUPPLEMENTARY INFORMATION: The meeting agenda will focus on reviewing proposals for forest projects and recommending funding during the business meeting. The public forum begins at 1:00 p.m.

Dated: June 5, 2013.

Angelita S. Bulletts,

Forest Supervisor.

[FR Doc. 2013–14038 Filed 6–12–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–58–2013]

Foreign-Trade Zone 83—Huntsville, Alabama; Application for Production Authority; Toray Carbon Fibers America, Inc.; (Polyacrylonitrile Fiber/Carbon Fiber Production), Decatur, Alabama

An application has been submitted to the Foreign-Trade Zones Board by the Huntsville-Madison County Airport Authority, grantee of FTZ 83, requesting production authority on behalf of Toray Carbon Fibers America, Inc. (Toray), located in Decatur, Alabama. The application conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 30, 2013.

The Toray facility (233 employees) is located at 2030 Alabama 20, Decatur, Alabama. A separate application for subzone status at the Toray facility is planned and will be processed under Section 400.31 of the FTZ Board's regulations. The facility is used for the production of polyacrylonitrile (PAN)-based carbon fiber, and PAN fiber, the primary material input for the company's carbon fiber. The facility will produce carbon fiber from both its own domestically-produced PAN and from foreign-sourced PAN.

Production under FTZ procedures could exempt Toray from customs duty payments on the foreign materials used in export production. The company anticipates that some 15 to 20 percent of the plant's carbon fiber shipments will be exported, and some 5 to 10 percent of its PAN fiber production will be exported. On its domestic sales, Toray would be able to choose the duty rates during customs entry procedures that apply to its finished carbon fiber (duty free) for the foreign inputs noted below. (The PAN fiber produced at the plant has higher duty rates than any of its foreign-sourced components.) Toray would also be exempt from duty payments on any foreign-origin materials that become scrap or waste during production. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Components and materials sourced from abroad (representing 70–75% of the value of the finished carbon fiber made from foreign-sourced PAN, and less than 1% of the value of carbon fiber made from domestically-produced PAN) include PAN fiber (duty rates, 7.5%—24,000 tow and 8%—12,000 tow), and sizing agents, spinning oils, solvents and spools/bobbins (duty rates range from 3.7–6.5%).

The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the FTZ Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is August 12, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 27, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: June 6, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–14046 Filed 6–12–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–59–2013]

Foreign-Trade Zone (FTZ) 155—Calhoun/Victoria Counties, Texas; Notification of Proposed Production Activity; Caterpillar, Inc.; (Excavator and Frame Assembly Production), Victoria, Texas

The Calhoun-Victoria Foreign Trade Zone, Inc., grantee of FTZ 155, submitted a notification of proposed production activity to the FTZ Board on behalf of Caterpillar, Inc. (Caterpillar), located in Victoria, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 29, 2013.

The Caterpillar facility is located within FTZ 155, Site 5, at 7300 Lone Tree Road, Victoria, Texas. The facility is used for the production of excavators and related frame assemblies. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products listed in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Caterpillar from customs duty payments on the foreign status components used in export production. On its domestic sales, Caterpillar would be able to choose the duty rates during customs entry procedures that apply to hydraulic track-type excavators and related fabricated frame assemblies (duty free) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Paints; sealants; windshield washer fluids; lubrication oils; catalysts; antifreeze; plastic articles (PVC rods and tubes, tubes, hoses, fittings, tape, decals, seal strips, bags, plugs, caps, retaining rings, clamping blocks, and clips); rubber articles (plates, sheets, shapes, grommets, clamps, hose, fittings, floor mats, gaskets, seals, insulation and lenses); v-ribbed belts; cork articles (sheets and gaskets); paper articles (gaskets, decals, and printed matter); graphite articles, including exhaust gaskets; gaskets made of mineral substances; ceramic substrate for catalytic converters; articles of glass (windows, rearview mirrors, and lenses); fiberglass sleeves; articles of steel (wire, tubing, fittings, flanges, threaded elbows, bends/couplings, lanyard cable, chain, fasteners; articles of copper (tubing, fittings, cables, washers, screws, gaskets, and seals); articles of aluminum (tubing, fittings, and rivets); padlocks with keys; locks; keys; metal hinges; mountings; supports; tubing nameplates; diesel engines; hydraulic components (cylinders, motors, governors, and pumps); compressors; fans (blades); turbochargers; air conditioners; heat exchangers; filters; windshield washer systems; buckets for excavators; dozer blades assembled to excavators; parts of forest machinery; windshield wipers; hydraulic hammers; valves; bearings; gear boxes; torque converters; final drives; flywheels; pulleys; gaskets of metal sheeting; seals; gas springs; shims; spacers; electric motors; power converters; electromagnetic couplings; clutches and brakes; solenoids; batteries; spark plugs; ignition coils; alternators; voltage regulators; electric water heaters; electric heating resistors; apparatus for transmission or receiving data; images; speakers; DVDs/CDs; smart cards (personality modules); transceivers; radio navigational aid apparatus; radios; antennas; indicator panels; horns; visual signaling equipment; capacitors; electrical terminals; fuses; circuit breakers; relays; switches; connectors; wire terminals; bus bars; fuse blocks; panels; consoles; lamps; diodes; transistors; EPROMS/EEPROMS; sensors; transducers; coaxial cable; wiring harnesses; electric wire; navigational instruments; hydrometers; measuring and checking instruments and monitors; odometers; tachometers; automatic regulating or controlling instruments; seats for excavators; and, electric lamps, lighting equipment and parts (duty rates range from free to 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 23, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Website, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Diane Finver at *Diane.Finver@trade.gov* (202) 482–1367.

Dated: June 7, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–14047 Filed 6–12–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket ID PTO–C–2013–0031]

National Medal of Technology and Innovation Nomination Evaluation Committee Meeting

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: The National Medal of Technology and Innovation (NMTI) Nomination Evaluation Committee will meet in closed session on Wednesday, June 26, 2013. The primary purpose of the meeting is to discuss the relative merits of persons, teams, and companies nominated for the 2012 NMTI.

DATES: The meeting will convene Wednesday, June 26, 2013, at approximately 9:00 a.m., and adjourn at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: John Palafoutas, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; telephone (571) 272–9821; or by electronic mail: *nmti@uspto.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, notice is hereby given that the NMTI Nomination Evaluation Committee, chartered to the United States Department of Commerce, will meet at the United States Patent and Trademark Office campus in Alexandria, Virginia.

The Secretary of Commerce is responsible for recommending to the President prospective NMTI recipients. The NMTI Nomination Evaluation Committee evaluates the nominations received pursuant to public solicitation

and makes its recommendations for the Medal to the Secretary. Committee members are distinguished experts in the fields of science, technology, business, and patent law drawn from both the public and private sectors and are appointed by the Secretary for three-year terms.

The NMTI Nomination Evaluation Committee was established in accordance with the FACA. The Committee meeting will be closed to the public in accordance with the FACA and 5 U.S.C. 552b(c)(4), (6) and (9)(B), because the discussion of the relative merit of the Medal nominations is likely to disclose information of a personal nature that would constitute a clearly unwarranted invasion of personal privacy; premature disclosure of the Committee's recommendations would be likely to significantly frustrate implementation of the Medal Program; and the meeting will include a Department of Commerce Ethics Division presentation and question and answer session which may be closed to protect the privileged and confidential personal financial information of Committee members.

The Chief Financial Officer and Assistant Secretary for Administration, United States Department of Commerce, formally determined on June 6, 2013, pursuant to Section 10(d) of the FACA, that the meeting may be closed because Committee members are concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4), (6) and (9)(B). Due to closure of this meeting, copies of any minutes of the meeting will not be available. A copy of the determination is available for public inspection at the United States Patent and Trademark Office.

Dated: June 10, 2013.

Teresa Stanek Rea,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 2013–14184 Filed 6–12–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0065]

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 July 15, 2013.

Title, Associated Form and OMB Number: Federal Write-In Absentee Ballot (FWAB), Standard Form 186 (SF–186); OMB Control Number 0704–TBD.

Type of Request: New Collection.

Number of Respondents: 1,200,000.

Responses per Respondent: 1.

Annual Responses: 1,200,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 300,000.

Needs and Uses: The information collection requirement is necessary to fulfill the requirement of the Uniformed and Overseas Absentee Voting Act (UOCAVA), 46 U.S.C. 1973ff wherein the Secretary of Defense is to prescribe the Federal write-in absentee ballot for absent uniformed service voters and overseas voters in general elections for Federal office.

Affected Public: The affected public are Uniformed Services members, their eligible family members, and U.S. citizens residing outside the U.S. (UOCAVA citizens) who have requested a State absentee ballot but did not receive one with enough time to vote and return it and UOCAVA citizens in States that allow the form to be used to apply for voter registration. The burden for this collection belongs to the individual States.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet 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. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

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, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: June 10, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–14042 Filed 6–12–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0061]

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 July 15, 2013.

Title, Associated Form and OMB Number: Federal Post Card Application (FPCA), Standard Form 76 (SF–76); OMB Control Number 0704–TBD.

Type of Request: New Collection.

Number of Respondents: 1,200,000.

Responses per Respondent: 1.

Annual Responses: 1,200,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 300,000.

Needs and Uses: The information collection requirement is necessary to fulfill the requirement of the Uniformed and Overseas Absentee Voting Act (UOCAVA), 46 U.S.C. 1973ff wherein the Secretary of Defense is to prescribe an official postcard form, containing an absentee voter registration application and an absentee ballot request application for use by the States.

Affected Public: Individuals or Households: Uniformed Services members, eligible family members, U.S. citizens residing outside the U.S.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet 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. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

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, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: June 10, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–14041 Filed 6–12–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0115]

Privacy Act of 1974; System of Records

AGENCY: National Geospatial-Intelligence Agency, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The National Geospatial-Intelligence Agency is altering a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on July 16, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before July 15, 2013.

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

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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: National Geospatial-Intelligence Agency (NGA), ATTN: Security Specialist, Mission Support, MSRS P–12, 7500 GEOINT Drive, Springfield, VA 22150.

SUPPLEMENTARY INFORMATION: The National Geospatial-Intelligence Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/privacy/SORNs/component/ngia/index.html.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 17, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 10, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

B0210–07

SYSTEM NAME:

Inspector General Investigative and Complaint Files (June 4, 2002, 67 FR 38479)

Change System ID to read ''NGA–013.''

SYSTEM NAME:

Delete entry and replace with ''National Geospatial-Intelligence Agency (NGA) Inspector General Investigative and Complaint Files.''

SYSTEM LOCATION:

Delete entry and replace with ''Records are maintained at NGA headquarters in Washington, DC metro facilities.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Current and former NGA employees, military personnel, contractors, members of the public who make an inquiry or file a complaint or allegation involving NGA.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Identifying information, such as name, address, telephone numbers, email addresses, employee identification number, job title and band, supervisor's contact information, company name, witness information and statements, military branch, rank, financial information, adverse information, technical reports, record of interviews, exhibits and photographs, Social Security Number (SSN), and sworn testimonies.

Investigative/complaint files, inquiries or investigative reports pertaining to complaints, allegations of fraud, waste, abuse, mismanagement, malfeasance, or reprisal as procedures pertaining to NGA personnel, procedures, policies or programs. Files may contain Reports of Investigation, sworn testimony, letters, memorandums and working papers regarding developed or obtained as a result of investigation or complaint wherein someone has made allegations of violations involving fraud, waste, abuse, mismanagement, reprisal, denial of due process pertaining to NGA personnel, programs, policies and/or procedures developed or obtained as a result of the investigation or complaint.

Letters/transcriptions of complaints, allegations and queries; letters of

appointment; reports of reviews, inquiries and investigations with supporting attachments, exhibits and photographs; record of interviews; witness statements; reports of legal review of case files, congressional responses; memoranda; letters and reports of findings and actions taken; letters to complainants and subjects of investigations; letters of rebuttal from subjects of investigations; finance; personnel; administration; adverse information, and technical reports.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations, 5 U.S.C. App., Inspector General Act of 1978, 10 U.S.C. 1612 citing 5 U.S.C. 2301, 44 U.S.C. 3545(c)(1), E.O. 12333, United States Intelligence Activities, as amended; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To analyze and evaluate the effectiveness and efficiency of NGA policies, programs, procedures, activities, and operations for the purpose of detecting and preventing fraud, waste and abuse. Additionally, the system is used to resolve complaints and inquiries, and to initiate proper corrective action if the allegation is proven to be true in fact as well as to be used for corrective action.''

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Records in this system are stored electronically.''

RETRIEVABILITY:

Delete entry and replace with ''Records may be retrieved by name or SSN.''

SAFEGUARDS:

Delete entry and replace with ''Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable NGA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Some of the technical controls include, limited, role based access as well as profiles based access to limit users to only data that is needed for the performance of their official duties. The system is located in a secure data center and operated by Federal personnel.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Investigative records are cutoff and retired when 15 years old, then destroyed/deleted 10 years after cutoff.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Assistant Inspector General for Plans and Programs, Office of the Inspector General, National Geospatial-Intelligence Agency (NGA), 7500 GEOINT Drive, Springfield, VA 22150.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

The request envelope and letter should both be clearly marked 'Privacy Act Inquiry.'

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury, as a substitute for notarization. A request for notification must meet the requirements of 32 CFR 320.4.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

The request envelope and letter should both be clearly marked 'Privacy Act Inquiry.'

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury, as a substitute for notarization. A request for notification must meet the requirements of 32 CFR 320.4.''

CONTESTING RECORD PROCEDURE:

Delete entry and replace with ''Individuals contesting the accuracy of records in this system of records contains information about themselves should address written inquiries to the National Geospatial-Intelligence Agency (NGA), Freedom of Information Act/Privacy Act Office, 7500 GEOINT Drive, Springfield, VA 22150.

The request envelope and letter should both be clearly marked 'Privacy Act Inquiry.'

The written request must contain your full name, current address, and date and place of birth. Also include an explanation of why you believe NGA would have information on you and specify when you believe the records would have been created.

You must sign your request and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury, as a substitute for notarization. A request for notification must meet the requirements of 32 CFR 320.4.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information originates from the individual and from sources contacted during personnel and background investigations.''

* * * * *

[FR Doc. 2013–14051 Filed 6–12–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2013–0016]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on July 16, 2013 unless comments are received which result in

a contrary determination. Comments will be accepted on or before July 15, 2013.

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

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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: Ms. Robin Patterson, Head, PA/FOIA Office (DNS–36), Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or by phone at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/privacy/SORNs/component/navy/index.html.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 13, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 10, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM05211–1

SYSTEM NAME:

Privacy Act Request/Amendment Files and Tracking System (April 2, 2008, 73 FR 17959)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL). Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Letters, memoranda, legal opinions, messages, and miscellaneous documents relating to an individual's request for access to or amendment of records concerning that person, including letters authorizing release to another individual, letters of denial, appeals, statements of disagreements, and related documents accumulated in processing requests received under the Privacy Act of 1974, as amended.

Personal information may include: Name, home and/or work address, home and/or work phone number, fax number, home and/or work email address; proof of identity; year request filed; serial number of response letter; case file number and copies of responsive records. Privacy requests may contain unsolicited personal information.

Collection of unsolicited personal information under this notice is only authorized in connection with requests for records maintained in other systems of records for the collection and maintenance of the specified PII.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 552a, The Privacy Act of 1974, as amended; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; Secretary of the Navy Instruction 5211.5, Department of the Navy Privacy Act Program.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the Navy's compilation of system of records notices may apply to this system.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Delete entry and replace with ''Paper and/or electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Name; year request filed; serial number of response letter; or case file number.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Granted requests, responses to requests for non-existent records, responses to requesters who provide inadequate descriptions and responses to requesters who fail to pay agency reproduction fees that are not appealed are destroyed 2 years after date of reply; requests which are denied and are appealed are destroyed after 5 years; requests which are amended are retained for 4 years after agencies agreement to amend; requests for amendment which are refused are destroyed 4 years after final determination by agency or 3 years after final adjudication by the courts; disclosure accounting forms are retained for the life of the record or 5 years after the disclosure, whichever is later.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Head, Department of Navy Privacy/Freedom of Information Act Office, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

Local system managers/Record Holders Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL).

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List (SNDL).

The request must be signed and contain the full name of the individual and one or more of the following kinds of information: year request filed; serial number of response letter; case file number.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List (SNDL).

The request must be signed and contain the full name of the individual and one or more of the following kinds of information: year request filed; serial number of response letter; case file number.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

* * * * *

[FR Doc. 2013–14052 Filed 6–12–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2013–0018]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on July 16, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before July 15, 2013.

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

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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: Ms. Robin Patterson, Head, PA/FOIA Office (DNS–36), Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or by phone at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site *http://dpclo.defense.gov/privacy/SORNs/component/navy/index.html.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 17, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 10, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N06110–1

SYSTEM NAME:

Physical Readiness Information Management System (PRIMS) (August 13, 2007, 72 FR 45235).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Policy Official Naval Support Activity Mid-south, 5722 Integrity Drive, Bldg 456, Millington, TN 38054–5045 for records of all active duty and reserve members.

Application and database are housed with Bureau of Naval Personnel Online (*https://www.bol.navy.mil*). The mailing address is Commanding Officer, Navy Personnel Command (PERS–5), 5720 Integrity Drive, Millington, TN 38055–6000.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Physical Readiness Information Management System (PRIMS) consists of command information, authorization information, member personnel data to include name, last four of Social Security Number (SSN), Department of Defense Identification Number (DoD ID Number), Unit Identification Code (UIC), gender, service, rank, date of birth, Navy Enlisted Code/Designator, date of last assignment, Preventive Health Assessment date, Physical Activity Risk Factor Questionnaire responses, medical waivers, body composition assessment (weight, height, neck, abdomen, waist, hips, percent body fat), Physical Readiness Test data, Fitness Enhancement Program data, Progress/Readiness Waivers, and Nutrition data.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy; OPNAVINST 6110.1 Series, Physical Readiness Program; DoD 6025.18–R, DoD Health Information Privacy Regulation; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To provide a standardized Navy database to monitor and track the progress of members' Physical Fitness Assessment (PFA) data and to identify, screen, train, educate, counsel, monitor and rehabilitate members who do not meet the PFA standards. This system is used by officials and employees responsible for performing fitness assessment and entering results into the system for the Department of the Navy, in the performance of their official duties relating to the conduct of physical fitness studies.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses that appear at the beginning of the Navy's compilation of system of records notices may apply to this system.

Note: This system of records contains Individually Identifiable Health Information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025–18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the

Privacy Act of 1974 or mentioned in this system of records notice.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and/or electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Records are retrieved by name, last four of SSN or DoD ID Number.''

SAFEGUARDS:

Delete entry and replace with ''Password controlled system, files and elements are accessible only to authorized persons having an official need-to-know. Physical access to terminals, terminal rooms, buildings and activities grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records will be maintained in PRIMS for five years and then archived and maintained by the primary record holder for an additional five years and then destroyed. Individual commands maintain working copies of the records and destroy after five years.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Personal Readiness and Community Support (OPNAV N135F), 5720 Integrity Drive, Millington, TN 38055–6000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''All active duty and active Reserve Navy members with internet capabilities who are seeking to determine whether this system of records contains information about themselves can access this record system online by first going to *https://www.bol.navy.mil*. Member must use LOGIN ID and password or Common Access Card (CAC) to gain access to site and then select PRIMS from the menu.

Former service members who are seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Operations (Code N135), 5720 Integrity Drive, Millington, TN 38055–6000 or to the official command where they were last assigned.

Official mailing addresses are published in the Standard Navy Distribution List.

Requests must be signed and individuals should include their full name, last four of SSN, name or UIC of last command assigned, and dates of last assignment.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

RECORDS ACCESS PROCEDURES:

Delete entry and replace with ''All active duty and active Reserve Navy members with Internet capabilities seeking access to records about themselves in this system of records may do so by first going to *https://www.bol.navy.mill*. Member must use LOGIN ID and Password or CAC to gain access to site and then select PRIMS from the menu.

Former service members seeking access to records about themselves in this system of records may receive a copy of the records by addressing written inquiries to the Chief of Naval Operations (Code N135), 5720 Integrity Drive, Millington, TN 38055–6000 or to the official command where they were last assigned.

Requests must be signed and individuals should include their full name, last four of SSN, name or UIC of last command assigned and dates of last assignment.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

* * * * *

[FR Doc. 2013–14054 Filed 6–12–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2013–0014]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on July 16, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before July 15, 2013.

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

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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: Ms. Robin Patterson, Head, PA/FOIA Office (DNS–36), Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or by phone at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/privacy/SORNs/component/navy/index.html*.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 6, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 10, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM05720–1

SYSTEM NAME:

FOIA Request/Appeal Files and Tracking System (April 2, 2008, 73 FR 17961)

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''FOIA request/appeal, copies of responsive records (redacted and released), correspondence generated as a result of the request, cost forms, memoranda, legal opinions, messages, and miscellaneous documents which relate to the request. Database used to track requests from start to finish and formulate response letters may contain name, Social Security Number (SSN), business or company name, home and/or work address, home and/or work phone number, fax number, home and/or work email address, year of request/appeal filed; serial number of response letter; case file number and/or caseworker. FOIA requests may contain unsolicited personal information.

Collection of the SSN under this notice is only authorized in connection with requests for records maintained in other systems of records that require that information and which have obtained authorization for the collection and maintenance of the SSN.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 552, the Freedom of Information Act, as amended; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; DoDD 5400.07, DoD Freedom of Information Act (FOIA) Program; Secretary of the Navy Instruction 5720.42F, Department of the Navy Freedom of Information Act Program; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To track, process, and coordinate requests/appeals/litigation made under the provisions of the FOIA. To provide responses to requests including requests for access to information regarding FOIA requests and/or what is being requested under the provisions of the FOIA. To compile data for FOIA reporting requirements.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the Navy's compilation of systems of records notices may apply to this system.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper and/or electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Name; year of request/appeal filed; serial number of response letter; case file number and/or caseworker.''

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties. Records are stored in cabinets or rooms, which are not viewable by individuals who do not have a need to know. Computerized databases are password protected and accessed by individuals who have a need to know. System software uses Primary Key Infrastructure (PKI)/Common Access Card (CAC) authentication to lock out unauthorized access.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Head, Department of Navy Privacy/Freedom of Information Act Office, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

RECORD HOLDERS:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is published as an appendix to the Navy's compilation of system of records notices.

APPELLATE AUTHORITIES:

Office of the Judge Advocate General (Code 14), 1322 Patterson Avenue SE., Suite 3000, Building 33, Washington, Navy Yard, Washington, DC 20374–5066

General Counsel of the Navy (FOIA), 1000 Navy Pentagon, Room 5A532, Washington, DC 20350–1000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Freedom of Information Act coordinator, Commanding Officer of the activity in question, or in the case of appeals to the appropriate appellate authority. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is published as an appendix to the Navy's compilation of system of records notices.

The request should contain the full name of the individual and one or more of the following kinds of information: year request/appeal filed; serial number of response letter; and/or case file number. Requests must also be signed.

Collection of the SSN under this notice is only authorized in connection with requests for records maintained in other systems of records that require that information and which have obtained authorization for the collection and maintenance of the SSN.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act coordinator, Commanding Officer of the activity in question, or in the case of appeals to the appropriate appellate authority. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) that is published as an appendix to the Navy's compilation of system of records notices.

The request should contain the full name of the individual and one or more of the following kinds of information: year request/appeal filed; serial number of response letter; and/or case file number. Requests must also be signed.

Collection of the SSN under this notice is only authorized in connection with requests for records maintained in systems of records that require that information and which have obtained authorization for the collection and maintenance of the SSN.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

* * * * *

[FR Doc. 2013–14053 Filed 6–12–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0076]

Agency Information Collection Activities; Comment Request; Targeted Teacher Shortage Areas Nationwide Listing

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 12, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0076 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Targeted Teacher Shortage Areas Nationwide Listing.

OMB Control Number: 1840–0595.

Type of Review: Extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 4,560.

Abstract: This request is for approval of recordkeeping and reporting requirements that are contained in the Federal Family Education Loan Programs (FFELP) regulations, which address the targeted teacher deferment provision of the Higher Education Act of 1965, as amended. The information collected is necessary for a State to support its annual request for designation of teacher shortage areas within the State. The collection of information from Chief State School Officers to support and document the request for teacher shortage areas within a given State can potentially enable student financial aid recipients to defer, reduce, or discharge loan debts and/or meet other specified obligations.

Dated: June 10, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–14050 Filed 6–12–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0034]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; eZ-Audit: Electronic Submission of Financial Statements and Compliance Audits

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 15, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0034 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: eZ-Audit: Electronic Submission of Financial Statements and Compliance Audits.

OMB Control Number: 1845–0072.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 6,100.

Total Estimated Number of Annual Burden Hours: 2,342.

Abstract: eZ-Audit is a web-based process designed to facilitate the submission of compliance and financial statement audits, expedite the review of those audits by the Department, and provide more timely and useful information to public, non-profit and proprietary institutions regarding the Department's review. eZ-Audit establishes a uniform process under which all institutions submit directly to the Department any audit required under the Title IV, HEA program regulations. eZ-Audit continues to have minimal number of financial template line items and general information questions.

Dated: June 10, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–14049 Filed 6–12–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0075]

Agency Information Collection Activities; Comment Request; IES Fellows Survey

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 12, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0075 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: IES Fellows Survey.

OMB Control Number: 1850–0873.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 625.

Total Estimated Number of Annual Burden Hours: 219.

Abstract: The surveys are for predoctoral and postdoctoral fellows taking part in the Institute of Education Sciences three education training grant programs. These programs provide universities support to provide predoctoral training in education research, postdoctoral training in education research, or postdoctoral training in special education research. The results of the survey will be used both to improve the fellowship programs as well as to provide information on the programs to policymakers, practitioners, and the public.

Dated: June 10, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–14055 Filed 6–12–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Free Application for Federal Student Aid (FAFSA) Information To Be Verified for the 2014–2015 Award Year

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

[CFDA Nos. 84.007, 84.033, 84.038, 84.063, and 84.268]

SUMMARY: For each award year, the Secretary publishes in the **Federal Register** a notice announcing the FAFSA information that an institution and an applicant may be required to verify. The notice also specifies what documentation is acceptable for verifying FAFSA information.

For the 2014–2015 award year, the Secretary announces, through this notice, the FAFSA information subject to, and the documentation acceptable for, verification.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., room 8053, Washington, DC 20006. Telephone: (202) 502–7890.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following chart lists, for the 2014–2015 award year, the FAFSA information that an institution and an applicant and, if appropriate, the applicant's parent(s) or spouse, may be required to verify under 34 CFR 668.56. The chart also lists the acceptable documentation that must be provided under § 668.57 to an institution for that information to be

verified. The Secretary will include on the applicant's Institutional Student Information Record (ISIR) flags that will indicate which FAFSA information needs to be verified for that applicant and, if appropriate, the applicant's parent(s) or spouse. The Student Aid Report (SAR) provided to the applicant will indicate that the applicant's FAFSA information has been selected for verification and direct the applicant to the institution for further instructions for completing the verification process.

FAFSA information	Acceptable documentation
Income information for tax filers[1 3] a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions d. Untaxed Portions of Pensions e. IRA Deductions and Payments f. Tax Exempt Interest Income g. Education Credits	For income information listed under items a through g for tax filers— 1) Tax year 2013 information that the Secretary has identified as having been obtained from the Internal Revenue Service (IRS) through the IRS Data Retrieval Tool[2] and that has not been changed after the information was obtained from the IRS; or 2) A transcript[2] obtained from the IRS that lists tax account information of the tax filer for tax year 2013. (34 CFR 668.57(a)).
h. Other Untaxed Income	For tax filers required to verify other untaxed income, a statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, that lists— 1) The sources of other untaxed income as provided under section 480(b) of the Higher Education Act of 1965, as amended (HEA) and the amounts of income from each source for tax year 2013; and 2) A copy of IRS Form W–2[4] for each source of employment income received for tax year 2013. (34 CFR 668.57(a)).
Income information for tax filers with special circumstances[1 3]. a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions d. Untaxed Portions of Pensions e. IRA Deductions and Payments f. Tax Exempt Interest Income g. Education Credits	1) For a student or the parent(s) of a dependent student who filed a 2013 joint income tax return and whose income is used in the calculation of the applicant's expected family contribution, who at the time the FAFSA was completed, was separated, divorced, widowed, or married to someone other than the individual included on the 2013 joint income tax return— a) A transcript[2] obtained from the IRS that lists tax account information of the tax filer(s) for tax year 2013; and b) A copy of IRS Form W–2[4] for each source of employment income received for tax year 2013. 2) For an individual who is required to file a 2013 IRS income tax return and has been granted a filing extension by the IRS— a) A copy of IRS Form 4868, ''Application for Automatic Extension of Time to File U.S. Individual Income Tax Return,'' that the individual filed with the IRS for tax year 2013; b) If applicable, a copy of the IRS's approval of an extension beyond the automatic six-month extension if the individual requested an additional extension of the filing time for tax year 2013; c) A copy of IRS Form W–2[4] for each source of employment income received for tax year 2013; and d) If self-employed, a signed statement certifying the amount of AGI and U.S. income tax paid for tax year 2013. **Note:** An institution may require that an individual granted a filing extension submit tax information using the IRS Data Retrieval Tool[2] or by obtaining a transcript[2] from the IRS that lists tax account information for tax year 2013, after the income tax return is filed. When an institution receives such information, it must reverify the FAFSA information.
h. Other Untaxed Income	3) For tax filers with special circumstances who are required to verify other untaxed income, a statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, that lists the sources of other untaxed income as provided under section 480(b) of the HEA and the amounts of income from each source for tax year 2013. (34 CFR 668.57(a)).
Income information for nontax filers a. Income earned from work b. Other Untaxed Income	For an individual who has not filed and, under IRS rules or other applicable government agency rules, is not required to file a 2013 income tax return— 1) A signed statement certifying— a) That the individual has not filed and is not required to file an income tax return for tax year 2013; b) The sources of income earned from work and amounts of income from each source for tax year 2013; and c) For nontax filers required to verify other untaxed income, the source of income as provided under section 480(b) of the HEA and the amounts of income from each source for tax year 2013; and 2) A copy of IRS Form W–2[4] for each source of employment income received for tax year 2013; or 3) If an institution has reason to believe that the signed statement provided by the applicant regarding whether that applicant has not filed and is not required to file a 2013 income tax return is inaccurate, the institution may request that the applicant obtain confirmation from the IRS.

FAFSA information	Acceptable documentation
	(34 CFR 668.57(a)).
• Number of Household Members	A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, that lists the name and age of each household member and the relationship of that household member to the applicant. **Note:** Verification of number of household members is not required if: • For a dependent student, the household size reported on the FAFSA is two and the parent is single, separated, divorced, or widowed; or the household size reported is three if the parents are married or unmarried and living together; or • For an independent student, the household size reported on the FAFSA is one and the applicant is single, separated, divorced, or widowed; or the household size reported is two if the applicant is married. (34 CFR 668.57(b)).
• Number in College	1) A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, listing the name and age of each household member who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the 2014–2015 award year and the name of that educational institution. 2) If an institution has reason to believe that the signed statement provided by the applicant regarding the number of household members enrolled in eligible postsecondary institutions is inaccurate, the institution must obtain a statement from each institution named by the applicant that the household member in question is, or will be, attending on at least a half-time basis unless— a) The institution the applicant is attending determines that such a statement is not available because the household member in question has not yet registered at the institution he or she plans to attend; or b) The institution has information indicating that the household member in question will be attending the same institution as the applicant. **Note:** Verification of the number of household members in college is not required if the number in college indicated on the ISIR is '1'. (34 CFR 668.57(c)).
• Supplemental Nutrition Assistance Program (SNAP-Food Stamps).	1) A statement signed by the applicant or, if the applicant is a dependent student, by one of the applicant's parents, affirming that SNAP-Food Stamps benefits were received by someone in the household during the 2012 and/or 2013 calendar years. 2) If an institution has reason to believe that the signed statement provided by the applicant regarding the receipt of SNAP-Food Stamps benefits is inaccurate, the applicant must provide the institution with documentation from the agency that issued the SNAP-Food Stamps benefits. **Note:** Verification of the receipt of SNAP-Food Stamps benefits is not required if the receipt of SNAP benefits is not indicated on the applicant's ISIR. (34 CFR 668.57(d)).
• Child Support Paid	1) A statement signed by the applicant or parent, as appropriate, certifying— a) The amount of child support paid; b) The name of the person who paid the child support; c) The name of the person to whom child support was paid; and d) The names of the children for whom child support was paid. 2) If the institution has reason to believe that the information provided in the signed statement is inaccurate, the institution must obtain documentation, such as— a) A copy of the separation agreement or divorce decree that shows the amount of child support to be provided; b) A statement from the individual receiving the child support showing the amount provided; or c) Documentation that the child support payments were made (e.g., copies of the child support checks, money order receipts, or similar records of electronic payments having been made). **Note:** Verification of child support paid is not required if child support paid is not indicated on the applicant's ISIR. (34 CFR 668.57(d)).
• High School Completion Status	1) *High School Diploma* a) A copy of the applicant's high school diploma; b) A copy of the applicant's final official high school transcript that shows the date when the diploma was awarded; or c) A copy of the "secondary school leaving certificate" (or other similar document) for students who completed secondary education in a foreign country and are unable to obtain a copy of their high school diploma or transcript. **Note:** Institutions that have the expertise may evaluate foreign secondary school credentials to determine their equivalence to U.S. high school diplomas. Institutions may also use the services of a foreign diploma evaluation service. 2) *Recognized Equivalent of a High School Diploma* a) General Educational Development (GED) Certificate or GED transcript;

FAFSA information	Acceptable documentation
	b) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma; c) An academic transcript that indicates the student successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree at any participating institution; or d) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and has not completed high school but has excelled academically in high school, documentation from the high school that the student excelled academically in high school and documentation from the postsecondary institution that the student has met the formalized, written policies of the postsecondary institution for admitting such students. 3) *Homeschool* a) If the State where the student was homeschooled requires by law that such students obtain a secondary school completion credential for homeschool (other than a high school diploma or its recognized equivalent), a copy of that credential. b) If State law does not require a homeschooled student to obtain a secondary school completion credential for homeschool (other than a high school diploma or its recognized equivalent), a transcript or the equivalent, signed by the student's parent or guardian, that lists the secondary school courses the student completed and documents the successful completion of a secondary school education in a homeschool setting. **Note:** In cases where documentation of an applicant's completion of a secondary school education is unavailable, e.g., the secondary school is closed and information is not available from another source such as the local school district or a State Department of Education, or in the case of homeschooling, the parent(s)/guardian(s) who provided the homeschooling is deceased, an institution may accept alternative documentation to verify the applicant's high school completion status. When documenting an applicant's high school completion status, an institution may rely on documentation it has already collected for purposes other than the Title IV verification requirements, if the documentation meets the criteria outlined above. (34 CFR 600.2, 668.32(e)(1) and (e)(4)).
• Identity/Statement of Educational Purpose	1) An applicant must appear in person and present the following documentation to an institutionally authorized individual to verify the applicant's identity: a) A valid government-issued photo identification such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or passport; and b) A signed statement using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose** I certify that I _____ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will be used only for educational purposes and to pay the cost of attending _____ for 2014–2015. (Name of Postsecondary Educational Institution) (Student's Signature) (Date) (Student's ID Number) 2) For an applicant who appears in person, an institution must maintain an annotated copy of the valid government-issued photo identification that includes— a) The date the identification was received; and b) The name of the institutionally authorized individual who received the identification. 3) If an institution determines that an applicant is unable to appear in person, he or she must provide the institution with— a) A copy of a valid government-issued photo identification such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or passport that is acknowledged in the notary statement; and b) An original notarized statement signed by the applicant using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose** I certify that I _____ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending _____ for 2014–2015. (Name of Postsecondary Educational Institution)

FAFSA information	Acceptable documentation
	(Student's Signature)
	(Date)
	(Student's ID Number)
	(34 CFR 668.57(d)).

[1] A tax filer who filed an income tax return other than an IRS form, such as a foreign or Puerto Rican tax form, must use the income information (converted to U.S. dollars) from the lines of that form that correspond most closely to the income information reported on a U.S. income tax return.

[2] An institution may accept a copy of a 2013 income tax return for tax filers who are unable to use the IRS Data Retrieval Tool or obtain an IRS Tax Return Transcript consistent with guidance that the Secretary may provide (e.g., victims of identity theft, individuals who filed an amended tax return, individuals who filed an income tax return other than an IRS form or individuals with authentication issues with the IRS). The copy must include the signature of the tax filer or of one of the filers of a joint income tax return or the signed, stamped, typed, or printed name and address of the preparer of the income tax return and the preparer's Social Security Number, Employer Identification Number, or Preparer Tax Identification Number.

[3] If a tax filer did not retain a copy of his or her 2013 tax account information and that information cannot be located by the IRS or a government of a U.S. territory or commonwealth or a foreign central government, the institution must accept—

a) A copy of IRS Form W–2 (see footnote 4), for each source of employment income received for tax year 2013 and, if self-employed, a signed statement certifying the amount of AGI and taxes paid for that self-employment for tax year 2013; or

b) A copy of a wage and tax statement or a signed statement by an individual who has filed an income tax return with a government of a U.S. territory or commonwealth or a foreign central government certifying the amount of AGI and taxes paid for tax year 2013.

[4] If an individual who is required to submit an IRS Form W–2 is unable to obtain one in a timely manner, the institution may permit that individual to provide a signed statement, in accordance with 34 CFR 668.57(a)(6), that includes—

a) The amount of income earned from work;

b) The source of that income; and

c) The reason why the IRS Form W–2 is not available in a timely manner.

Other Sources for Detailed Information

We provide a more detailed discussion on the verification process in the following resources:

- *2014–2015 Application and Verification Guide.*
- *2014–2015 ISIR Guide.*
- *2014–2015 SAR Comment Codes and Text.*
- *2014–2015 COD Technical Reference.*
- Program Integrity Information—Questions and Answers on Verification at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/verification.html.*

These publications are on the Information for Financial Aid Professionals Web site at *www.ifap.ed.gov.*

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070c–1070c–4, 1070g, 1071–1087–2, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Delegation of Authority: The Secretary of Education has delegated authority to Brenda Dann-Messier, Assistant Secretary for Vocational and Adult Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: June 7, 2013.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2013–14069 Filed 6–12–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST)

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially-closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2.

DATES: Thursday, July 18, 2013; 9:00 a.m.–12:00 p.m.

ADDRESSES: National Academy of Sciences (in the Lecture Room), 2101 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Ms. Marjory Blumenthal at email: *mblumenthal@ostp.eop.gov* or by telephone at (202) 456–4444. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations

concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and, Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on July 18, 2013, from 9:00 a.m. to 12:00 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear from speakers who will provide information on ''smart cities'' and mathematical sciences. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately one hour with the President on July 18, 2013, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on July 18, 2013, at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at: *http://whitehouse.gov/ostp/pcast,* no later than 12:00 p.m. (EDT) on July 10, 2013. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. (EDT) on July 10, 2013, so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Ms. Marjory Blumenthal, at the email or telephone number listed above, at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on June 7, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–14063 Filed 6–12–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14506–000]

Three Valleys Municipal Water District; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

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

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14506–000.

c. *Date filed:* March 20, 2013.

d. *Applicant:* Three Valleys Municipal Water District.

e. *Name of Project:* Miramar Bypass Hydroelectric Station Project.

f. *Location:* The proposed Miramar Bypass Hydroelectric Station Project would be located within the Miramar Water Treatment Plant in City of Claremont, Los Angeles County, California. The land on which all the project structures are located is owned by the applicant, Three Valleys Municipal Water District.

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

h. *Applicant Contact:* Mr. Ben Peralta, Jr., P.E., Three Valleys Municipal Water District, 1021 E. Miramar Avenue, Claremont, CA 91711; Dr. Lon House, NLine Energy, Inc., 533 Airport Blvd., Suite 400, Burlingame, CA 94010.

i. *FERC Contact:* Alyssa Dorval, (212) 273–5955, *alyssa.dorval@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of the project:* The proposed Miramar Bypass Hydroelectric Station Project would consist of: (1)

Two hydroelectric turbines within the existing hydroelectric station with a total nameplate capacity of 292 kilowatts; (2) a combination of 14 feet of 16-inch diameter discharge pipeline connecting to 40 feet of 30-inch diameter discharge pipeline, laid underground outside the existing hydroelectric station building, used to connect the turbines to the influent header; and (3) appurtenant facilities. The applicant estimates the project would have an average annual generation of 600,000 kilowatt-hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number, P–14506, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

r. *Waiver of Pre-filing Consultation:* On October 25, 2012, the applicant requested the agencies to support the waiver of the Commission's consultation requirements under 18 CFR 4.38(c). On January 25, 2013, the Bureau of Reclamation provided comments and agreed to waive the pre-filing consultation. On January 28, 2013, the California Department of Fish and Wildlife provided comments and confirmed the request for the pre-filing consultation waiver. No other comments regarding the request for waiver were received. Therefore, we intend to accept the consultation that has occurred on this project during the pre-filing period and we intend to waive pre-filing consultation under section 4.38(c), which requires, among other things, conducting studies requested by resource agencies, and distributing and consulting on a draft exemption application.

Dated: June 6, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14015 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2775–009]

The City of Holyoke Gas & Electric Department; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

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

a. *Type of Application:* Surrender of License.

b. *Project No.:* 2775–009.

c. *Date Filed:* May 17, 2013.

d. *Applicant:* The City of Holyoke Gas & Electric Department (HG&E).

e. *Name of Project:* Gill Mill (D Wheel).

f. *Location:* On the Holyoke Canal, in Hampden County, Massachusetts.

g. *Filed Pursuant to:* 18 CFR 6.1.

h. *Applicant Contact:* Mr. Paul S. Ducheney, Superintendent—Electric Production, Holyoke Gas & Electric Department, 99 Suffolk Street, Holyoke, MA 01040, (413) 536–9340, *ducheney@hged@com;* Nancy J. Skancke, NJS Law PLC, 1025 Conn. Ave. NW., Suite 1000, Washington, DC 20036–5417. (202) 327–5460, *njskancke@njs-law.com.*

i. *FERC Contact:* Ms. Krista Sakallaris, (202) 502–6302, *krista.sakallaris@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2775–009) on any comments, motions, or protests filed.

k. *Description of Request:* The applicant proposes to surrender the license and decommission the generating facilities for the Gill Mill (D Wheel) Project (P–2775). The applicant states that the project became inoperable due to a fire in May 2012; after which the licensee determined it is not economical to repair the facilities. The licensee is proposing to decommission by disconnecting the generating equipment, and securing all other project works.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 6, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14014 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2497–009]

The City of Holyoke Gas & Electric Department; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

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

a. *Type of Application:* Surrender of License.

b. *Project No.:* 2497–009.

c. *Date Filed:* May 17, 2013.

d. *Applicant:* The City of Holyoke Gas & Electric Department (HG&E).

e. *Name of Project:* Mt. Tom Mill.

f. *Location:* On the Holyoke Canal, in Hampden County, Massachusetts.

g. *Filed Pursuant to:* 18 CFR 6.1.

h. *Applicant Contact:* Mr. Paul S. Ducheney, Superintendent—Electric Production, Holyoke Gas & Electric Department. 99 Suffolk Street, Holyoke, MA 01040, (413) 536–9340, *ducheney@hged.com;* Nancy J. Skancke, NJS Law PLC, 1025 Conn. Ave. NW., Suite 1000, Washington, DC 20036–5417. (202) 327–5460, *njskancke@njs-law.com.*

i. *FERC Contact:* Ms. Krista Sakallaris, (202) 502–6302, *krista.sakallaris@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2497–009) on any comments, motions, or protests filed.

k. *Description of Request:* The applicant proposes to surrender the license and decommission the generating facilities for the Mt. Tom Mill Project (P–2497). The applicant states that the project has not operated since August 2007 due to employee safety concerns; in addition, a fire occurred in March 2012, which destroyed the roof where the hydro generator is stored, further damaging the project. The licensee has determined it is not economical to repair the facilities and restore project operation. The licensee is proposing to decommission by disconnecting the generating equipment, and securing all other project works.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances

related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 6, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14013 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–967–000.

Applicants: Black Marlin Pipeline Company.

Description: Negotiated Rate Tariff Provision to be effective 7/4/2013.

Filed Date: 6/4/13.

Accession Number: 20130604–5092.

Comments Due: 5 p.m. ET 6/17/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–941–001.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Rate Case (RP13–941) Amendment Filing—Electronic. Correction to be effective 7/1/2013.

Filed Date: 6/5/13.

Accession Number: 20130605–5000.

Comments Due: 5 p.m. ET 6/17/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated June 5, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14009 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3594–000.

Applicants: City of Anaheim, California.

Description: Compliance Report to be effective N/A.

Filed Date: 6/5/13.

Accession Number: 20130605–5077.

Comments Due: 5 p.m. ET 6/26/13.

Docket Numbers: ER13–1403–000.

Applicants: Dominion Bridgeport Fuel Cell, LLC.

Description: Amendment to May 2, 2013 Dominion Bridgeport Fuel Cell, LLC tariff filing.

Filed Date: 6/4/13.

Accession Number: 20130604–5142.

Comments Due: 5 p.m. ET 6/14/13.

Docket Numbers: ER13–1630–001.

Applicants: California Independent System Operator Corporation, AES Huntington Beach, L.L.C.

Description: Amendments to RMR Agreement Under Docket ER13–1630 to be effective 6/26/2013.

Filed Date: 6/5/13.

Accession Number: 20130605–5001.

Comments Due: 5 p.m. ET 6/26/13.

Docket Numbers: ER13–1634–000.

Applicants: Puget Sound Energy, Inc.

Description: Morgan Stanley TX Agreements 669 and 670 to be effective 8/3/2013.

Filed Date: 6/4/13.

Accession Number: 20130604–5120.

Comments Due: 5 p.m. ET 6/25/13.

Docket Numbers: ER13–1635–000.

Applicants: Southwest Power Pool, Inc.

Description: 2548R1 KMEA and Westar Energy Meter Agent Agreement to be effective 6/1/2013.

Filed Date: 6/5/13.

Accession Number: 20130605–5031.

Comments Due: 5 p.m. ET 6/26/13.

Docket Numbers: ER13–1636–000.

Applicants: ISO New England Inc., Northeast Utilities Service Company, The Connecticut Light and Power Company.

Description: ISO New England Inc. and Northeast Utilities Service

Company, on behalf of The Connecticut Light and Power Company, Notice of Cancellation of Original Service Agreement No. LGIA–ISONE/NU–06–02.

Filed Date: 6/5/13.

Accession Number: 20130605–5060.

Comments Due: 5 p.m. ET 6/26/13.

Docket Numbers: ER13–1637–000.

Applicants: PacifiCorp.

Description: OATT Revised Attachment C (6/5/13) to be effective 6/6/2013.

Filed Date: 6/5/13.

Accession Number: 20130605–5067.

Comments Due: 5 p.m. ET 6/26/13.

Docket Numbers: ER13–1638–000.

Applicants: Public Service Company of Colorado.

Description: 2013–06–05_TSGT-Comanche Telecom 344 to be effective 8/5/2013.

Filed Date: 6/5/13.

Accession Number: 20130605–5084.

Comments Due: 5 p.m. ET 6/26/13.

Docket Numbers: ER13–1639–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3569—Queue Position X2–012 to be effective 5/6/2013.

Filed Date: 6/5/13.

Accession Number: 20130605–5099.

Comments Due: 5 p.m. ET 6/26/13.

Docket Numbers: ER13–741–002.

Applicants: ISO New England Inc., Bangor Hydro Electric Company.

Description: Oakfield LGIA Supplemental Compliance Filing to be effective N/A.

Filed Date: 6/5/13.

Accession Number: 20130605–5045.

Comments Due: 5 p.m. ET 6/26/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 5, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14008 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG13–17–000 et al.]

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
CPV Shore, LLC	EG13–17–000
Goldwaite Wind Energy LLC	EG13–18–000
Patua Project LLC	EG13–19–000
Alta Wind X, LLC	EG13–21–000
Alta Wind XI, LLC	EG13–22–000

Take notice that during the month of May 2013, the status of the above-captioned entities as Exempt Wholesale Generators Companies became effective by operation of the Commission's regulations, 18 CFR 366.7(a).

Dated: June 7, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14059 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–160–000]

Northwest Pipeline GP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Blue Water LNG Meter Station and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Blue Water Liquefied Natural Gas (LNG) Meter Project involving construction and operation of facilities by Northwest Pipeline GP (Northwest) in Benton County, Washington. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on July 8, 2013.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Northwest provided landowners adjacent to the proposed meter station with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know.'' This fact sheet addresses a number of typically-asked questions, including how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Northwest proposes to construct and operate a new LNG meter station and associated piping within the yard of its existing Plymouth Peak Shaving Plant (Plant). The Plant is located on about 72 acres on the north side of the Columbia River in Benton County, Washington, about 19 miles south of the city of Kennewick. The Plant consists of two LNG storage tanks with a capacity of 1.2 billion cubic feet each, two liquefaction trains capable of liquefying 12 million standard cubic feet per day of natural gas, vaporization facilities capable of vaporizing 305,300 dekatherms of natural gas per day (Dth/d), and a boil-off gas compression system.[1]

The proposed Blue Water LNG Meter could supply up to 216,000 gallons of LNG per day (or 17,705 Dth/d) to Transfuels LLC (Transfuels). Transfuels proposes to construct and operate a non-jurisdictional LNG trunk loading facility on 20 acres of current agricultural land directly north of the fenced boundary for Northwest's Plant. The jurisdictional facilities proposed by Northwest would include:

- A new 360-foot-long pipeline, supported on a pipe rack, to convey LNG from the existing transfer pipeline between the storage tanks, through the new meter runs, and then to the custody transfer point at the plant boundary fence;
- Three new 32-foot-long meter runs and a one-inch-diameter receipt meter and three-inch-diameter piping to handle boil-off-gas coming back from the custody transfer point, all covered by a 20-foot by 24-foot shelter;

[1] These facilities were authorized by the FERC in Docket Nos. CP74–46–000 and CP76–106–000.

• Two new auxiliary meters to measure gas volumes used by customers;
• New chromatographic gas analysis and electronic flow measurement equipment, housed in a fully enclosed building, 26-feet-long by 22-feet-wide, located adjacent to the north of the meter runs shelter;
• A new two-inch-diameter vent line to contain and transfer gas to an existing relief header in the event gas is released, supported on the new pipe rack; and
• A new cable tray to house power and communication wires, supported on the new pipe rack.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

All construction activities would take place within the 72-acre property of Northwest's Plant. Excavation for new facilities related to the Blue Water LNG Meter Station project would cover about 0.05 acre.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:
• Geology and soils;
• Water resources and wetlands;
• Vegetation and wildlife;
• Cultural resources;
• Air quality and noise; and
• Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section on page 5 of this notice.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultations with the Washington State Historic Preservation Office (SHPO), and to solicit their views, and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northwest. This preliminary list of issues may be changed based on your comments and our analysis.
• Safety issues related to vapor dispersion from the jurisdictional Blue Water Meter Station; and
• Environmental review of the non-jurisdictional Transfuels LNG loading facility by Benton County, Washington.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the 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 the Commission receives them in Washington, DC on or before July 8, 2013.

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 (CP13–160–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations (CFR), Part 1501.6.

[5] The Advisory Council on Historic Preservation's regulations are at 36 CFR Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; interested Indian tribes; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the compact disk version, or if you would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *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 (i.e., CP13–160). Be sure you have selected an appropriate date range. 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. 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 now 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. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: June 6, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14016 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13011–003]

Shelbyville Hydro LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486, 52 **Federal Register** 47897), the Office of Energy Projects has reviewed Shelbyville Hydro LLC's application for an original license for the proposed Lake Shelbyville Dam Hydroelectric Project (FERC Project No. 13011–003) and has prepared an environmental assessment (EA). The project would be located on the Kaskaskia River in Shelby County, Illinois, at an existing dam operated by the U.S. Army Corps of Engineers. The proposed project, if licensed, would occupy a total of 3.24 acres of federal land.

In the EA, Commission staff analyzes the potential environmental effects of licensing the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at 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.

You may also register online at *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.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix, ''Lake Shelbyville Dam Hydroelectric Project, P–13011–003'' to all comments.

FOR FURTHER INFORMATION CONTACT: Lesley Kordella by telephone at 202–502–6406 or by email at *Lesley.Kordella@ferc.gov.*

Dated: June 7, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14060 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF13–8–000]

Sabine Pass Liquefaction Expansion, LLC; Sabine Pass Liquefaction, LLC; Sabine Pass LNG, L.P.; Cheniere Creole Trail Pipeline, L.P.: Notice of Intent To Prepare an Environmental Assessment for the Planned Sabine Pass Liquefaction Expansion Project and Cheniere Creole Trail Pipeline Expansion Project, Request for Comments on Environmental Issues and Notice of Public Scoping Meetings

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the expansion and operation of the Sabine Pass Liquefaction Expansion, LLC; Sabine Pass Liquefaction, LLC; and Sabine Pass LNG, L.P. (collectively referred to as Sabine Pass) Sabine Pass Liquefaction Expansion Project (SPLE Project) and the Cheniere Creole Trail Pipeline, L.P. (CCTPL) Chenier Creole Trail Pipeline Expansion Project (CCTPL Expansion Project). Sabine Pass is proposing to expand the existing Sabine Pass Liquefied Natural Gas (SPLNG) Terminal in Cameron Parish, Louisiana. CCTPL is proposing to expand and extend its existing pipeline system within the following parishes in the State of Louisiana: Cameron, Calcasieu, Beauregard, Allen, and Evangeline. Together, the SPLE Project and the CCTPL Expansion Project are referred to as the Project. This EA will be used by the Commission in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the project scoping period will close on July 10, 2013.

You may submit comments in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meetings listed below.

Date and time	Location
Tuesday, June 18, 2013, 6:00 pm CDT	Comfort Suites, 2505 Highway 108, South, Sulphur, LA 70665.
Wednesday, June 19, 2013, 6:00 pm CDT	Kinder City Hall Community Center, 316 North 8th Street, Kinder, LA 70648.

This notice is being sent to the Commission's current environmental mailing list for these projects as described under the Environmental Mailing List Section of this notice. State and local government representatives are asked to notify their constituents of these planned projects and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves these projects, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the Companies could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

The SPLE Project would primarily consist of the addition of two liquefaction trains (Trains 5 and 6) capable of processing an average of 1.3 billion cubic feet per day (Bcf/d) of natural gas and to export about 9 million metric tonnes of liquefied natural gas (LNG) per annum (mtpa) via LNG carriers. Trains 5 and 6 would comprise Stage 3 of the Sabine Pass Liquefaction Project, which is currently under construction at the SPLNG Terminal. When completed, all six liquefaction trains at the SPLNG Terminal would be capable of processing an average of 4.0 Bcf/d of natural gas and to export about 27 million mtpa. The SPLE Project would be located within areas that have been evaluated and assessed in conjunction with the Commission's review and approval of other portions of the SPLNG Terminal.[1]

The SPLE Project would consist of the following facilities:

- Two LNG liquefaction trains;
- Additional power generation (two gas turbine generators capable of generating approximately 30 megawatts of power);
- Other infrastructure and modifications (including five recycle boil-off gas compressors, three instrument air compressor packages, two demineralizer units, one demineralized water tank, and two diesel-powered standby generators);
- Modification of terminal facilities; and
- New and remodeled buildings.

CCTPL plans to expand and extend the existing CCTPL pipeline system to enable it to provide an additional 1.5 Bcf/d of transportation capacity to the SPLNG Terminal. The CCTP Expansion Project would involve the addition of approximately 98.7 miles of pipeline, including two loops (Loop 1 and Loop 2), an Extension, and three laterals. In addition, CCTPL would install a new compressor station and four metering and regulating (M&R) stations. Several components of the planned CCTPL Expansion Project occur in areas that have been evaluated and assessed in conjunction with the previous FERC review and approval of the Sabine Pass Pipeline and Cheniere Creole Trail Pipeline.[2]

The CCTPL Expansion Project would consist of the following facilities in Louisiana:

- Loop 1, about 13.7 miles of 42-inch-diameter pipeline in Cameron Parish;
- Loop 2, about 24.5 miles of 42-inch-diameter pipeline in Calcasieu and Beauregard Parishes;
- Extension, about 46.8 miles of 42-inch-diameter pipeline in Beauregard, Allen, and Evangeline Parishes;
- Laterals, three 36-inch-diameter laterals (two 1,000-foot-long laterals and

[1] See Docket Nos. CP04–47–000, CP04–38–000, CP04–39–000, CP04–40–000, CP05–396–000, CP04–47–001, CP–05–396–001, CP11–72–000, and CP13–02–000.

[2] See Docket Nos. CP04–47–000, CP04–38–000, CP04–40–000, CP05–360–000, CP05–357–000, CP05–358–000, CP05–359–000, and CP12–351–000.

one 13.3-mile-long lateral) in Evangeline Parish;

- New or modified compressors at the previously-authorized Gillis Compressor Station in Beauregard Parish;
- A new Mamou Compressor Station in Evangeline Parish;
- Four new M&R Stations;
- Pig launchers/receivers; and
- Mainline valves (MLVs).

The general location map of the project facilities is in Appendix 1.[3]

Land Requirements for Construction

Construction of the planned SPLE Project would disturb about 156 acres of the 853-acre SPLNG Terminal site. Additional temporary work areas would also be required for material laydown, equipment storage, and parking. Locations for the additional temporary work areas are under development and will be provided at a later date.

Construction of the planned CCTPL Expansion Project would disturb about 1,621.2 acres of land, including 1,579.2 acres for construction of the pipeline and 42 acres for the aboveground facilities. Following construction, about 640.1 acres would be maintained for operation of the pipeline and aboveground facilities. The MLVs and launcher/receivers would be installed within the permanent right-of-way. In addition to the land requirements noted above, additional land would be required for temporary access roads to the pipeline construction right-of-way, permanent access roads to the new aboveground facilities, and temporary contractor/pipe yards for the storage of equipment, materials, and pipe.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety; and
- Cumulative impacts.

We will also evaluate reasonable alternatives to the Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, will be published and distributed to the public. A comment period will be allotted after the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section of this notice.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Department of Energy (USDOE), Office of Fossil Energy (FE), and the U.S. Army Corps of Engineers have expressed their intention to participate as cooperating agencies in the preparation of the EA to satisfy their NEPA responsibilities related to this project.

Involvement of the U.S. Department of Energy

The FERC is the lead federal agency in preparing the EA to satisfy the requirements of the NEPA. The USDOE, FE, has agreed to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities.

Under section 3 of the Natural Gas Act of 1938, as amended, 15 USC 717b, the USDOE would authorize applications to export natural gas, including LNG, unless it finds that the proposed export would not be consistent with the public interest. For the SPLE Project, the purpose and need for USDOE action is to respond to two applications received by Sabine Pass Liquefaction, LLC (SPL) filed with USDOE on February 27, 2013 (FE Docket No. 13–30–LNG), and on April 2, 2013 (FE Docket No. 13–42–LNG), seeking authorization to export up to 0.28 Bcf/d and 0.24 Bcf/d, respectively, of domestic natural gas as LNG. SPL requests to export LNG for a 20-year period from the proposed SPL facilities in Cameron Parish, Louisiana, commencing the earlier of the date of first export or eight years from the date that the requested authorization is issued.

Consultations Under Section 106 of the Natural Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the Natural Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s) (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the Project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA would document our findings on the potential Project impacts on

[3] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the Natural Register for Historic Places.

historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Sabine Pass. This preliminary list of issues may be changed based on your comments and our analysis:

- Construction and operational impacts on residences near the planned compressor station;
- Air quality;
- Socioeconomics;
- Construction and operational impacts on wetlands and waterbodies;
- Construction and operational impacts on migratory birds and threatened and endangered species;
- Construction and operational impacts on agriculture;
- Impacts on cultural resources, including Native American properties;
- Cumulative environmental impacts; and
- Public safety.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the 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 July 10, 2013.

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 (PF13–8–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, 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 Web site at *www.ferc.gov* under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; Native American Tribes; environmental and public interest groups; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who own homes within certain distances of aboveground facilities, and anyone who submitted comments on the project. We have made every effort to include all commentors on the mailing list; however, we are unable to include commentors that did not include a physical address with their comments. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

Once the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *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 (i.e., PF13–8). Be sure you have selected an appropriate date range. 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. 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 now 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. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: June 7, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14061 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF13–7–000]

Columbia Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned East Side Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the East Side Expansion Project involving construction and operation of

pipeline looping [1] and associated facilities by Columbia Gas Transmission, LLC (Columbia) in Chester County, Pennsylvania and Gloucester County, New Jersey. Columbia also plans to modify one interconnect in New York, three compressor stations in Pennsylvania and one compressor station in Maryland. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on July 8, 2013.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

Comments about the project may be submitted in writing or verbally at the public scoping meeting to be held as described below. To submit written comments, please see the public participation section of this notice.

FERC Public Scoping Meeting East Side Expansion Project

June 18, 2013/7:00 p.m., Sykes Auditorium, West Chester University, 110 West Rosedale Avenue, West Chester, PA 19383

June 19, 2013/7:00 p.m., Woolwich Township Hall, 120 Village Green Drive, Swedesboro, NJ 08085

If you are a landowner receiving this notice, a Columbia representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. Columbia would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Columbia plans to expand and improve its existing natural gas transmission pipeline system to increase operation flexibility and efficiency, provide bi-directional flow capabilities, and an additional 310,000 dekatherms per day of natural gas service to mid-Atlantic markets. Specifically, Columbia plans to construct, modify, install or abandon and replace, and operate the following natural gas transmission pipeline facilities:

- *Line 1278 Loop:* Construct and operate approximately 8.9 miles of 26-inch-diameter natural gas transmission pipeline, generally running parallel to the existing Line 1278 pipeline in Chester County, Pennsylvania.
- *Line 10345 Loop:* Construct and operate approximately 7.4 miles of 20-inch-diameter natural gas transmission pipeline, generally running parallel to the existing 10345 pipeline in Gloucester County, New Jersey.
- *Wagoner Interconnect (Sparrowbush, New York):* Modify the existing interconnect with the Millennium Pipeline to facilitate additional service.
- *Milford Compressor Station (Milford, Pennsylvania):* Abandon the existing compressors and replace them with two Solar turbine-driven centrifugal compressors totaling 6,600 horsepower (hp). Also, upgrade compressor station piping and metering facilities.
- *Easton Compressor Station (Easton, Pennsylvania):* Abandon the existing compressors and replace them with two Solar turbine-driven centrifugal compressors totaling 19,500 hp.
- *Eagle Compressor Station (Chester Springs, Pennsylvania):* Install additional piping and valves.
- *Rutledge Compressor Station (Fallston, Maryland):* Modify the compressor station mainline valve setting.

The general locations of the project facilities are shown in Appendix 1.[2]

Land Requirements

According to Columbia, construction of the planned facilities would require the temporary use of approximately 195.78 acres of land. Operation of the planned facilities would require the permanent use of approximately 52.01 acres of land. About 89 percent of the planned pipeline would be co-located with and parallel to existing Columbia natural gas transmission pipeline.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Cultural resources;
- Land use;
- Socioeconomics;
- Air quality and noise;
- Reliability and safety; and
- Cumulative environmental impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various environmental resources.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

[1] A loop is a segment of pipe that is installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

Our independent analysis of the issues will be presented in the EA. The EA will be available in the public record through the Commission's eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section of this notice.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Army Corps of Engineers has expressed its intention to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Columbia. This preliminary list of issues may change based on your comments and our analysis. Issued identified include:

- Potential impacts on residences in close proximity to the right-of-way;
- Potential cumulative impacts from multiple pipelines on a single property;
- Tree clearing;
- Erosion and sediment control; and
- Potential impacts on water quality.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the 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 the Commission receives them in Washington, DC on or before July 8, 2013. However, this is not your only public input opportunity.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF13–7–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the *eComment* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister*.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

Copies of the completed draft EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

Once Columbia files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

site (*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 (i.e., PF13–7–000). Be sure you have selected an appropriate date range. 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. 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. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: June 6, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14017 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–173]

Martin Dam Hydroelectric Project; Notice of Availability of the Draft Environmental Impact Statement for the Martin Dam Hydroelectric Project and Intention To Hold Public Meetings

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 Martin Dam Hydroelectric Project (FERC No. 349), located on the Tallapoosa River in Tallapoosa, Coosa, and Elmore Counties, Alabama, and has prepared a Draft Environmental Impact Statement (draft EIS) for the project. The project occupies 1.39 acres of federal lands administered by the U.S. Bureau of Land Management.

The draft EIS contains staff evaluations of the applicant's proposal and the alternatives for relicensing the Martin Dam Hydroelectric 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,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (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.

On February 8, 2012, the Commission published notice of application accepted for filing, soliciting motions to intervene and protests, ready for environmental analysis, and soliciting comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions. The notice also established a procedural schedule for issuing the draft EIS, filing comments on the draft EIS, the deadline for filing modified terms and conditions, and issuing the final EIS. Because of the complexity of the issues, the procedural schedule has been revised to allow for later issuance of the draft EIS, pursuant to section 5.25(a) of the Commission's regulations.

All comments must be filed by Tuesday, August 13, 2013, and should reference Project No. 349–173. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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 may attend a public meeting that Commission staff will hold for the purpose of receiving comments on the draft EIS. At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and 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. A notice detailing the exact date, time, and location of the public meetings will be forthcoming. The meeting will also be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

For further information, please contact Stephen Bowler at (202) 502–6861 or at *stephen.bowler@ferc.gov.*

Dated: June 6, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14012 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–16–000]

Crosstex Processing Services, LLC; Notice of Petition for Temporary Waiver of Filing and Reporting Requirements

Take notice that on March 28, 2013, pursuant to Rule 204 of the Commission's Rules of Practice and Procedure, 18 CFR 385.204 (2012), Crosstex Processing Services, LLC filed a petition requesting that the Commission grant a temporary waiver of the tariff filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act and parts 341 and 357 of the Commission's regulations, with respect to certain segments of the Cajun-Sibon pipeline system, as more particularly described in the petition.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Any person desiring to intervene or to protest in this 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 5:00 p.m. Eastern time on the specified comment date. 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 5 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on June 19, 2013.

Dated: June 7, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14058 Filed 6–12–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0152; FRL–9823–6]

Proposed Information Collection Request; Comment Request; 40 CFR Part 64 Compliance Assurance Monitoring Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request, ''40 CFR Part 64 Compliance Assurance Monitoring Program'' (EPA ICR No. 1663.08, OMB Control No. 2060–0376) to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the information collection request, which is currently approved through December 31, 2013. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget control number.

DATES: Comments must be submitted on or before August 12, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0152 online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Angela Hackel, Office of Air Quality and Planning Standards, Sector Policies and Programs Division (D243–05), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5262; fax number: (919) 541–3207; email address: *hackel.angela@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this information collection request (ICR). The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about the EPA's public docket, visit: *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to the Office of Management and Budget (OMB) for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Clean Air Act (CAA) contains several provisions directing the EPA to require source owners to conduct monitoring to support certification as to their status of compliance with applicable requirements. These provisions are set forth in section 504 and section 114 of the CAA. Under CAA section 504(c), each operating permit must ''set forth inspection, entry, monitoring, compliance, certification, and reporting requirements to assure compliance with the permit terms and conditions.'' See also CAA section 504(a) (each permit shall require reporting of monitoring and such other conditions as are necessary to assure compliance). CAA section 504(b) allows us to prescribe by rule, methods and procedures for determining compliance recognizing that continuous emissions monitoring systems need not be required if other procedures or methods provide

sufficiently reliable and timely information for determining compliance. Section 114A(a)(1) of the CAA provides additional authority concerning monitoring, reporting and recordkeeping requirements. This section provides the Administrator with the authority to require any owner or operator of a source to install and operate monitoring systems and to record the resulting monitoring data. We promulgated the Compliance Assurance Monitoring rule, 40 CFR part 64, on October 22, 1997 (62 FR 54900) pursuant to these provisions. In accordance with CAA section 114(c) and CAA section 503(e), the monitoring information source owners must submit must also be available to the public except under circumstances set forth in section 114(c) of the CAA. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

We are soliciting comments to:

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

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

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting election submission of responses.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are all facilities required to have an operating permit under Title V of the CAA. See section 502(a) of the CAA, which defines the sources required to obtain a Title V permit. See also 40 CFR 70.2 and 71.2.

Respondent's obligation to respond: Mandatory under Title V of the CAA. See section 502(a) of the CAA, which defines the sources required to obtain a Title V permit. See also 40 CFR 70.2 and 71.2.

Estimated number of respondents: 3,290 owner and operators and 112 permitting authorities. The total number of respondents is 3,402.

Frequency of response: At least every 6 months per Title V, 70.6(a)(3)(iii)(A) and (B).

Total estimated burden: 343,187 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $14,168,185 (per year), includes $0 annualized capital or operation and maintenance costs.

Changes in Estimates: There is decrease of 7,110,394 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is a result of the fact that most facilities are now using electronic monitoring to conduct their recording, thus, resulting in a decrease in the number of labor hours needed. Additionally, all facilities with existing permits that include approved 40 CFR part 64 monitoring have now submitted the existing monitoring approach in their renewal applications, therefore, significantly reducing the costs for new monitoring development. Furthermore, in order to reflect projected trends for the next 3 years, we updated some of the formulas used to calculate burden. All of these factors have contributed to the decrease in burden.

Dated: June 6, 2013.

Kevin Culligan,

Acting Director, Sector Policies and Programs Division, Office of Air Quality Planning and Standards.

[FR Doc. 2013–14074 Filed 6–12–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 11–42; DA 13–1188]

Wireline Competition Bureau Provides Guidance Regarding the 2013 Lifeline Recertification Process

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) provides guidance regarding the 2013 Lifeline recertification process. The Bureau clarifies that all active Lifeline subscribers enrolled or recertified in a calendar year must be recertified the next calendar year, and in every calendar year thereafter. The Bureau also describes the process by which ETCs can elect to have the Universal Service Administrative Company perform the recertification process.

DATES: Effective June 13, 2013.

FOR FURTHER INFORMATION CONTACT: Jonathan Lechter, Wireline Competition Bureau, (202) 418–7387 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's Public Notice in WC Docket No. 11–42; DA 13–1188, released May 22, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov/document/wcb-provides-guidance-regarding-2013-lifeline-recertification-process.*

I. Clarifications Regarding Recertification

1. On October 1, 2012, GCI filed a petition seeking clarification of the recertification process after 2012 and the requirement that subscribers be recertified ''annually.'' GCI argues that the Commission should clarify that the subscribers subject to the annual recertification are only those subscribers that have not provided an initial certification in the same calendar year. GCI argues that ''annual'' means that ETCs recertify subscribers once every calendar year, not every twelve months from the subscriber's initial certification or last recertification. Most commenters agreed that requiring recertification once each calendar year is the most administratively efficient option and is consistent with the *Lifeline Reform Order, 77 FR 12784, March 2, 2012.*

2. We agree with GCI and clarify that ETCs must recertify each new subscriber in the calendar year following the year in which the subscriber initially enrolled in the Lifeline program. We also clarify that ETCs are required to recertify subscribers each calendar year. As discussed in more detail below, if a subscriber is either initially enrolled with or recertified by an ETC in a particular calendar year (*e.g.,* 2013), the subscriber must be recertified by that ETC the next calendar year (*e.g.,* 2014).

3. Permitting recertification during the next calendar year, after both initial certification and recertification, is consistent with the Commission's approach in the *Lifeline Reform Order* to balance the need for a recertification

requirement with minimizing the burden of the recertification process on ETCs and consumers. In the *Lifeline Reform Order,* in order to eliminate ineligible consumers from the program, the Commission required ETCs to obtain proof of eligibility and certifications for all new subscribers enrolled after June 1, 2012. Subscribers that signed up prior to June 1, 2012, and therefore did not provide proof of eligibility because that requirement was not yet effective, had to be recertified by the end of 2012. Operating together, these two requirements ensured that by the end of 2012, ETCs would obtain from all subscribers either proof of eligibility or a certification from each subscriber that he or she was eligible. As the Commission explained, the recertification rule balances the need to identify and de-enroll ineligible subscribers with imposing fewer burdens on ETCs and consumers than other, more onerous, recertification requirements. Consistent with that approach, this clarification that ETCs must recertify Lifeline subscribers during the next calendar year balances the importance of the recertification rule with minimizing the burdens and costs on ETCs and consumers, while also providing ETCs with greater flexibility to tailor the recertification process to their particular business processes.

4. Next, in order to provide additional guidance to ETCs and to further reduce the burden on ETCs, consumers, and USAC, we direct ETCs to use the FCC Form 497 filed in February of each year to establish the baseline of subscribers who must be recertified. To illustrate, an ETC must recertify in 2013 all subscribers enrolled prior to January 1, 2013 and for which the ETC sought reimbursement on its February 2013 Form 497. We conclude that a snapshot of consumers remains necessary to facilitate the recertification process, and in the absence of a snapshot with a stated baseline of subscribers subject to recertification, it would be difficult for the Commission or auditors to determine the number of subscribers subject to recertification or how many subscribers de-enrolled prior to the recertification attempt. A snapshot also provides a way to closely compare the number of subscribers subject to recertification and the number of subscribers de-enrolled for non-usage by month. When the Commission instituted the recertification requirement in the *Lifeline Reform Order,* it implemented a similar snapshot requirement for ETCs by requiring ETCs to use the May 2012 Form 497. While this snapshot was appropriate for the initial recertification round for the reasons described above, using an ETC's February Form 497 going forward ensures that nearly all subscribers subject to recertification in 2013 (*i.e.,* those that enrolled or recertified prior to January 1, 2013) are included in the snapshot. A snapshot taken early in the year also allows ETCs the flexibility of starting their recertification process sooner and permits ETCs to further space-out the process as resources permit. We also conclude that a February snapshot, unlike a snapshot from December 31 of the prior year, ensures that subscribers de-enrolled from the prior year's recertification process will not be subject to recertification in 2013. This same February snapshot will apply to subsequent years.

5. Finally, we note that Sprint supports an option that would allow ETCs to recertify subscribers within twelve months from a subscriber's enrollment or anniversary date. Sprint argues that allowing this approach, in addition to a once per calendar year approach, will minimize subscriber confusion and be less administratively burdensome. The approach we adopt herein does not preclude an ETC from recertifying its subscribers every twelve months, and we encourage Sprint and other ETCs to recertify subscribers as soon and as often as is practicable, consistent with the clarifications we provide herein. For the reasons set forth above, however, we require only that a subscriber be recertified during the calendar year following the year in which the subscriber initially enrolled in the Lifeline program or was last recertified.

II. USAC Recertification Process

6. Starting in 2013, ETCs have the option of having USAC conduct the annual recertification process on their behalf. The Commission delegated to the Bureau the authority to establish, in coordination with USAC, a process for USAC to recertify subscribers. We describe this process below.

7. USAC will recertify subscribers by mailing each subscriber a letter that provides the subscriber the notice required by section 54.405(e)(4) of the Commission's rules, informing the subscriber that the subscriber has 30 days to recertify the subscriber's continued eligibility to receive Lifeline service or the subscriber will be de-enrolled from the Lifeline program. The letter will also explain the recertification process and how the subscriber may confirm his or her eligibility. Subscribers will also receive a call or text message during the 30-day period to prompt a response. Any subscriber response submitted after the 30-day deadline will not be processed and the subscriber will be considered ineligible for the program and will be de-enrolled.

8. USAC will provide subscribers with three methods to respond to the letter and recertify their eligibility. First, USAC will accept consumer calls made to a toll-free number, during which consumers will be able to recertify eligibility through an Inter-Active Voice Response (IVR). Second, USAC will allow consumers to verify their identity, read the certification language, and submit a response indicating they are recertifying their eligibility through a Web site maintained by USAC. Third, subscribers may also recertify by signing a recertification form provided by USAC and mailing the signed form to a receiving address designated by USAC.

9. ETCs must provide notice to USAC that they will elect the USAC recertification process by June 21, 2013. ETCs not making an election by the deadline will be presumed to have not elected to use USAC. The election is final for 2013 and will remain in place for future years unless affirmatively revoked by the ETC. This election must be made on an operating company basis and applies to all states and study area codes covered by the operating company.

10. ETCs that elect to have USAC recertify their Lifeline subscribers must provide USAC with a subscriber list based on their February 2013 Form 497 in a standardized format by July 15, 2013, that includes first name, last name, address, Lifeline telephone number, date of birth, and last four digits of social security number for each subscriber (in order to validate the certifications received). To the extent that a state agency conducts recertification for all or a portion of an ETC's subscribers, the ETC may not elect to utilize USAC for recertifying those subscribers subject to recertification by the state agency. Therefore, prior to transmittal to USAC, the ETC should remove from its subscriber list those subscribers that are subject to the state agency's recertification process. Each ETC that selects USAC to perform the recertification process will provide a toll-free number that USAC can provide to the ETC's consumers who have questions about their service.

11. USAC will complete the recertification process over a series of months, by grouping the ETCs that elect to have USAC complete the process into phases so that the influx of responses can be staggered. This grouping will be

done randomly and staggered based upon USAC capacity.

12. USAC will compile the responses and provide each ETC with a record of the subscriber recertification. USAC will provide each ETC with a list of subscribers that did not recertify, and therefore must be de-enrolled, and provide ETCs with sufficient information to compile their FCC Form 555 at least 30 days before the annual January 31 due date. ETCs must de-enroll subscribers within five days of receiving notice that the subscriber has failed to recertify. As noted above, all active subscribers enrolled in Lifeline prior to 2013 and for which the ETC sought reimbursement on its February 2013 Form 497 are subject to recertification in 2013.

13. We conclude that good cause exists to make the procedures established in this Public Notice effective immediately upon publication in the **Federal Register**, pursuant to section 553(d)(3) of the Administrative Procedure Act. We find good cause based on the need for the procedures to be in place and available to ETCs in time for ETCs to be able to submit their elections to USAC, and provide USAC with a subscriber list in time to comply with the procedures we adopt here.

III. Final Regulatory Flexibility Certification

14. The Regulatory Flexibility Act (''RFA'') requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

15. We hereby certify that the clarification and procedures announced in this Public Notice will not have a significant economic impact on a substantial number of small entities. In this Public Notice, the Commission eases the regulatory compliance burden on ETCs by allowing for greater flexibility to recertify their subscribers and by outlining the procedures for ETCs to have USAC perform recertifications on their behalf. This Public Notice does not modify any of our reporting requirements. The Commission will send a copy of this Public Notice, including this certification, to the Chief Counsel for Advocacy of the SBA. In addition, the Public Notice (or a summary thereof) and certification will be published in the **Federal Register**.

Federal Communications Commission.

Kimberly A. Scardino,

Division Chief, Telecommunications Access Policy Division Wireline Competition Bureau.

[FR Doc. 2013–14065 Filed 6–12–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

China Interocean Transport Inc. (OFF), Bldg. #75, North Hangar Road, Rm. 241A, Jamaica, NY 11430. Officers: Hon Yin Ng, Vice President (QI), Chao Dou, President. Application Type: QI Change.

Daisy Mae Concepcion V. Taleon dba DMT Global Logistics (NVO & OFF), 11291 S. Church Street, Orange, CA 92869. Officer: Daisy Mae Concepcion V. Taleon, Sole Proprietor (QI). Application Type: New NVO & OFF License.

Dulce Auto Import & Export, Inc. (OFF), 15316 SW 16 Terrace, Miami, FL 33185. Officer: Dulce Guzman, President (QI). Application Type: New OFF License.

Eagle Shipping Ltd. (NVO), 408 Elmwood Court One, Sharon Hill, PA 19079. Officers: Daniel Wackerman, President (QI), John M. Poole, Vice President. Application Type: QI Change.

John S. Kim and Paul H. Choe dba Shock Value International dba JP Global Logistics (NVO & OFF), 377 Oyster Point Blvd., Suite 18, South San Francisco, CA 94080. Officers: John S. Kim, Partner (QI), Paul H. Choe, Partner. Application Type: New NVO & OFF License.

Koch Maritime, Inc. (NVO & OFF), 2230 Energy Park Drive, St. Paul, MN 55108. Officers: Stan Sing Lau, Vice President (QI), David Koch, CEO. Application Type: QI Change.

Logistics Management Solutions, L.C. dba LMS Logistics (NVO & OFF), One City Place Drive, Suite 415, Saint Louis, MO 63141. Officers: Gregory L. Umstead, Vice President (QI), Dennis Schoemchi, President. Application Type: New NVO & OFF License.

Marine Bulk Freight Forwarding, S.A. DE C.V. (NVO), Parque de Granada No. 71, P.H. 504, Huixquilucan, Estado de Mexico 52785 Mexico. Officers: Moises S. Leon, President (QI), Moises S. Aviles, Secretary. Application Type: New NVO License.

Pinki Enterprises, Inc. (NVO), 167–25 Rockaway Blvd., Jamaica, NY 11434. Officer: Lea Molnar Dujmovic, President. Application Type: Add Trade Name Sail Container Line.

Samskip, Incorporated (NVO), Norfolk Business Center, 2551 Eltham Avenue, Suite F, Norfolk, VA 23513. Officers: Olafur Matthiasson, President (QI), Thorarinn Thorarinsson, Director.

Application Type: QI Change.

Steel Direct Shipping Line, LLC (NVO & OFF), 482 Pier T Avenue, Long Beach, CA 90802. Officers: Silvana Jones, Vice President (QI), George Adams, President. Application Type: Add OFF Service.

Unigroup Worldwide, Inc. dba Brewster Lines (NVO & OFF), One Premier Drive, Fenton, MO 63026. Officers: John M. Hiles, Assistant Secretary (QI), Patrick G. Bachler, President. Application Type: Add Trade Name UniGroup Relocation.

Worldbridge Logistics, Inc. (NVO), 22 Century Blvd., Suite 510, Nashville, TN 37214. Officers: Gary Brown, Senior Vice President (QI). Michael E. Swett, President. Application Type: QI Change.

By the Commission.

Dated: June 7, 2013.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2013–14024 Filed 6–12–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary license has been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 019060N.
Name: Skelton Sherborne Inc.
Address: 1225 North Loop West, Suite 432, Houston, TX 77008.
Date Reissued: May 10, 2013.

James A. Nussbaumer,
Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–14023 Filed 6–12–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

License No.: 0345F.
Name: Stone Forwarding Company, Inc.
Address: 6000 Broadway, Suite 101, Galveston, TX 77551.
Date Revoked: May 1, 2013.
Reason: Failed to maintain a valid bond.

License No.: 1621F.
Name: Soo Hoo, Angela M. dba Soo Hoo Customs Broker.
Address: 977 N. Broadway, Suite 307, Los Angeles, CA 90012.
Date Revoked: May 1, 2013.
Reason: Failed to maintain a valid bond.

License No.: 003081N.
Name: SMS Express Company, Inc. dba Dyna Freight Inc.
Address: 19516 So. Susana Road, Rancho Dominguez, CA 90221.
Date Revoked: April 28, 2013.
Reason: Failed to maintain a valid bond.

License No.: 15328N.
Name: Apex World Transport, Inc.
Address: 2127 Kennewick Place NE., Renton, WA 98056.
Date Revoked: May 10, 2013.
Reason: Failed to maintain a valid bond.

License No.: 15975N.
Name: Centrans International Marines Shipping (USA), Inc. dba Centrans International Forwarding Co.
Address: 6161 Savoy Drive, Suite 300, Houston, TX 77035.
Date Revoked: May 10, 2013.
Reason: Failed to maintain a valid bond.

License No.: 017279N.
Name: Unicom Trans, Inc.
Address: 15500 S. Western Avenue, Gardena, CA 90249.
Date Revoked: May 11, 2013.
Reason: Failed to maintain a valid bond.

License No.: 017948F.
Name: API Network, Inc.
Address: 3318 SW 2nd Avenue, Fort Lauderdale, FL 33315.
Date Revoked: May 2, 2013.
Reason: Failed to maintain a valid bond.

License No.: 18340N.
Name: Shipping International, Inc.
Address: 975 66th Avenue, Oakland, CA 94621.
Date Revoked: May 1, 2013.
Reason: Failed to maintain a valid bond.

License No.: 019060F.
Name: Skelton Sherborne Inc.
Address: 1225 North Loop West, Suite 432, Houston, TX 77008.
Date Revoked: May 10, 2013.
Reason: Failed to maintain a valid bond.

License No.: 019335N.
Name: Liner American Services Corp. dba American Liner Services.
Address: 8320 NW 14th Street, Doral, FL 33126.
Date Revoked: May 1, 2013.
Reason: Failed to maintain a valid bond.

License No.: 019625N.
Name: Transair Express Inc.
Address: 1601 Bayshore Highway, Suite 205, Burlington, CA 94010.
Date Revoked: May 1, 2013.
Reason: Failed to maintain a valid bond.

License No.: 020529F.
Name: KN Special Logistics, Inc.
Address: 22780 Indian Creek Drive, Suite 160, Sterling, VA 20166.
Date Revoked: May 18, 2013.
Reason: Failed to maintain a valid bond.

License No.: 022034N.
Name: Competition Transport Inc.
Address: 1326 Spruce Avenue, Orlando, FL 32824.
Date Revoked: May 10, 2013.
Reason: Failed to maintain a valid bond.

License No.: 023565NF.
Name: Watercraft Mix, Inc. dba Export Import.
Address: 4380 E. 11th Avenue, Hialeah, FL 33013.
Date Revoked: May 17, 2013.
Reason: Failed to maintain valid bonds.

James A. Nussbaumer,
Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 2013–14025 Filed 6–12–13; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–12SG]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Assessing and Evaluating Human Systems Integration Needs in Mining—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under Public Law 91–173 as amended by Public Law 95–164 (Federal Mine Safety and Health Act of 1977), and Public Law 109–236 (Mine Improvement and New Emergency Response Act of 2006) is requesting OMB approval for a new project for a 3-year period. The project is aimed at determining the following information with regards to the necessary inclusion of Human Systems Integration into research related to underground coal mining: (1) What information is critical for a miner to safely perform his job, (2) what processes (e.g., expertise, decision making, attention, etc.) are necessary for a miner to effectively perform his job, and (3) how do the miner and the machine interact. The title has changed since publication of the 60-day **Federal Register** Notice (previous title ''*Human Systems Integration Design Guidelines (MinerFirst) for Improved Mine Worker Safety''*). The goals of the project remain

the same but several changes have been made to the research questions and plan. Several of the research questions have been updated from the initial submission to reflect a more specific focus on identifying situational information and the cognitive demands that affect a miner's ability to do his or her job. To be consistent with changes to the research questions, the data collection instruments, both the number of instruments initially proposed as well the content of the instruments has changed. Phase I and III of the research project remain unchanged, phase II however has been modified. Instead of administering one (1) research questionnaire to assess situational awareness or more specifically what information miners believe is necessary for them to understand and interact with their surroundings and to safely complete their jobs, we have developed five (5) research questionnaires to accomplish this goal. These research questionnaires are a General Preference Questionnaire, a Subject Matter Expert Questionnaire, a Roof Bolter Operator Questionnaire, a Cognitive Lighting Questionnaire, and a Safety Director Questionnaire. Focus groups are still planned; however, this data collection method will be used to perform usability testing on any interfaces designed by the Cognitive Engineering Team. The Fatigue Risk Management Systems Assessment Tool was removed; Vest Usability Testing will be performed in order to determine the usability and wearability of mining vests. During Vest Usability Testing miners are asked to first complete a Vest Usability questionnaire, wear a mining vest for one month while performing their job, and then complete a follow up Vest Usability questionnaire. Finally, a Roof Bolter Questionnaire was added to the research plan to assess and determine the usability and effectiveness of a lighting warning system during operation of the roof bolting machine. Findings from these studies will be used to obtain the type and flow of information miners need to safely perform their jobs as well as test some possible interventions to improve situational awareness in this dynamic environment.

The General Preference Questionnaire was designed to determine how and when miners working in an underground coal mine prefer to have information about their work environment, the location of themselves, others, and equipment communicated to them while they are working. This questionnaire will be administered to 75 miners working in an underground coal mine.

The Subject Matter Expert (SME) Questionnaire was designed to determine how subject matter experts (e.g., experienced continuous miner operators) prefer to have information about their work environment, the location of themselves, others and equipment communicated to them while they are working. The questionnaire will be administered to 50 miners working in an underground coal mine in one of two positions: continuous miner operator or fire boss.

The Safety Director Questionnaire was designed to determine what machinery and equipment is currently being used within the underground coal mining environment. This questionnaire will be administered to up to 50 Safety Directors working at an underground mining operation.

Vest Usability Testing was designed to examine the effectiveness and viability of physically integrating equipment. This will be done by asking a group of miners to wear mining vests during their normal work hours and complete a questionnaire before and after the vest wearing period. Approximately 60 underground coal miners will be asked to take part in Vest Usability Testing.

The Roof Bolter Questionnaire will be used to assess the functional lighting needs and problems around roof bolting machines and the usability of a lighting feedback system for specific controls. Approximately 30 Roof Bolter Operators will be asked to complete the Roof Bolter Questionnaire (half before the intervention and half after).

There are no costs to the miners as study participation will take place during their normal working hours. Thus, any cost associated with the experiment will be incurred by the mining company. The total estimated annual burden hours are 442.

Estimated Annualized Burden Hours

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)
Mine Employee	Informed Consent	285	1	5/60
Mine Employee	Talent Waiver	285	1	2/60
Mine Employee	Demographic Questionnaire	285	1	2/60
Mine Employee	Task and Cognitive Task Analyses: Continuous Miner Operator.	10	1	2
Mine Employee	Task and Cognitive Task Analyses: Fire Boss	10	1	2
Mine Employee	Direct Observation: Continuous Miner Operator	10	1	4
Mine Employee	Direct Observation: Fire Boss	10	1	4
Mine Employee	General Preference Questionnaire	75	1	30/60
Mine Employee	Subject Matter Expert Questionnaire	50	1	1
Mine Employee	Safety Director Questionnaire	50	1	30/60
Mine Employee	Roof Bolter Questionnaire	30	2	15/60
Mine Employee	Vest Usability Testing	60	2	45/60
Mine Employee	Focus Groups	30	1	1
Mine Employee	Lab Experiments	30	1	1

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–14037 Filed 6–12–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: Modulation of Poliovirus Replicative Fitness by Deoptimization of Synonymous Codons

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS), is considering granting an exclusive license, in the field of use of vaccine targets for treatment or prevention of diseases in human health and in animal health, to practice the inventions listed in the patent applications referred to below to Codagenix Inc., having a place of business in Stony Brook, New York. The patent rights in these inventions have been assigned to the government of the United States of America. The patent applications(s) to be licensed are:

US Provisional Application 60/617,545, filed 10/8/2004, entitled ''Modulation of Poliovirus Replicative Fitness by Deoptimization of Synonymous Codons''; PCT Application PCT/US05/036241, filed 10/7/2005, entitled ''Modulation of Poliovirus Replicative Fitness by Deoptimization of Synonymous Codons''; US National Stage Application 11/576,941, filed 11/19/2007, entitled ''Modulation of Poliovirus Replicative Fitness by Deoptimization of Synonymous Codons''; and all related continuing and foreign patents/patent applications for the technology family. CDC Technology ID No. I–025–04.

Status: Pending.

Priority Date(s): 10/8/2004.

If granted, the licensee will pay CDC royalties in accordance with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

Technology

Infections by intracellular pathogens such as viruses, bacteria and parasites, are cleared in most cases after activation of specific T cellular immune responses that recognize foreign antigens and eliminate infected cells. Vaccines against those infectious organisms have been traditionally developed by administration of whole live attenuated or inactivated microorganisms. Although research has been performed using subunit vaccines, the levels of cellular immunity induced are usually low and not capable of eliciting complete protection against diseases caused by intracellular microbes. However, CDC inventors discovered that replacement of one or more natural (or native) codons in a pathogen with synonymous non-preferred codons can decrease the replicative fitness of the pathogen, thereby attenuating the pathogen. The non-preferred synonymous codon(s) encode the same amino acid as the native codon(s), but have nonetheless been found to reduce a pathogen's replicative fitness. This invention teaches compositions and methods that can be used to develop attenuated vaccines having well-defined levels of replicative fitness and enhanced genetic stabilities.

DATES: Only written comments and/or applications for a license which are received by CDC on or before July 15, 2013 will be considered.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the planned license should be directed to Donald Prather, J.D., Ph.D., Technology Licensing and Marketing Specialist, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, Telephone: (770) 488–8612; Facsimile: (770) 488–8615; Email: *dmprather@cdc.gov.*

SUPPLEMENTARY INFORMATION: Applications for a license filed in response to this notice will be treated as objections to the giving of the planned license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 7, 2013.

J. Ronald Campbell,

Director, Division of Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 2013–14036 Filed 6–12–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, July 15, 2013, 8:00 a.m. to July 15, 2013, 5:00 p.m., National Institute of Environmental Health Sciences, 111 T.W. Alexander Drive, Research Triangle Park, NC, 27709 which was published in the **Federal Register** on May 29, 2013, 2013–12635.

The meeting notice is amended to change the date of the meeting from July 15, 2013 to July 16, 2013. The meeting is closed to the public.

Dated: June 7, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13997 Filed 6–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Functional Assays to Screen Genomic Hits.

Date: July 2, 2013.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge

Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Trials SEP Review.

Date: July 3, 2013.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 7, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–13996 Filed 6–12–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0225]

Certificate of Alternative Compliance for the NOAA Research Vessel FSV–6 RUBEN LASKER, 9664988

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the NOAA research vessel FSV–6 RUBEN LASKER as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on December 20, 2012.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2013–0225 in the ''SEARCH'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LT Steven Melvin, District Nine, Prevention Branch, U.S. Coast Guard, telephone 216–902–6343. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed for under 33 U.S.C. 1605(c) and 33 CFR 81.18, has been issued for the NOAA research vessel FSV–6 RUBEN LASKER. The vessel's primary purpose is to conduct oceanographic research around the world. The unique design of the vessel did not lend itself to full compliance with Annex I of the Inland Rules Act.

The Commandant, U.S. Coast Guard, certifies that full compliance with the Inland Rules Act would interfere with the special functions/intent of the vessel and would not significantly enhance the safety of the vessel's operation. Placing the special purpose fishing and stern light in the required position would interfere with the vessel's science and boat/davit operations.

The Certificate of Alternative Compliance authorizes the NOAA research vessel FSV–6 RUBEN LASKER to deviate from the requirements set forth in Annex I of the Inland Rules Act by placing its special purpose fishing lights on the main masthead at FR50 and the stern light at the stern at FR100.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: May 10, 2013.

S.E. Anderson,

Commander, U.S. Coast Guard, Acting Chief, Prevention Division, By Direction of the Commander, Ninth Coast Guard District.

[FR Doc. 2013–14080 Filed 6–12–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0406]

Certificate of Alternative Compliance for the M/V CHARLEVOIX, 225736

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the passenger vessel ferry *CHARLEVOIX* as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on May 10, 2013.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2013–0406 in the ''SEARCH'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LT Steven Melvin, District Nine, Prevention Branch, U.S. Coast Guard, telephone 216–902–6343. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed for under 33 U.S.C. 1605 (c) and 33 CFR 81.18, has been issued for the M/V CHARLEVOIX. The vessel's primary purpose is a cable guided passenger car ferry that operates on the South Arm of Lake Superior in Charlevoix, Michigan. The unique design of the vessel did not lend itself to full compliance with Annex I of the Inland Rules Act.

The Commandant, U.S. Coast Guard, certifies that full compliance with the Inland Rules Act would interfere with the special functions/intent of the vessel and would not significantly enhance the safety of the vessel's operation. Placing the single masthead and stern lights on this cable guided passenger and vehicle ferry would obstruct the vehicle deck.

The Certificate of Alternative Compliance authorizes the M/V CHARLEVOIX to deviate from the requirements set forth in Annex I of the Inland Rules Act, by installing two Masthead lights for each direction of travel as near as practical to the vessel centerline and two sets of stern lights for each direction of travel as the aft and forward end of the deckhouse.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: May 24, 2013.

S. E. Anderson,

Commander, U.S. Coast Guard, Acting Chief, Prevention Division by Direction of the Commander, Ninth Coast Guard District.

[FR Doc. 2013–14085 Filed 6–12–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0003]

Agency Information Collection Activities: Application To Extend/Change Nonimmigrant Status, Form I–539; Revision of a Currently Approved Collection

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until August 12, 2013.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0003 in the subject box, the agency name and Docket ID USCIS–2007–0038. To avoid duplicate submissions, please use only one of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *www.Regulations.gov* under e-Docket ID number USCIS–2007–0038;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

SUPPLEMENTARY INFORMATION:

Comments

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–539; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form will be used to apply for an extension of stay or for a change to another nonimmigrant classification. USCIS will be combining Supplement A to Form I–539, Filing Instructions for V Nonimmigrant Status; OMB Control No. 1615–0004, in Form I–485 instructions under OMB Control No. 1615–0003.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–539—117,907 total respondents with those responding via the paper I–539 form requiring an estimated 1.88 hours per response, and 16,385 filers responding via the Electronic Immigration System (ELIS) requiring an estimated 1.75 hours. Supplement A—1,216 total respondents responding via the paper I–539A requiring an estimated .50 hours per response. Biometrics processing—134,292 total respondents with a burden of 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 409,292 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: June 7, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–13969 Filed 6–12–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2013–N265: FF02R06000–FXRS1265022LPP–134]

Establishment of the Rio Mora National Wildlife Refuge and Rio Mora Conservation Area, Colfax, Mora, and San Miguel Counties, NM

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has established the Rio Mora National Wildlife Refuge and Conservation Area as a unit of the National Wildlife Refuge System. The Service established the Rio Mora National Wildlife Refuge and Conservation Area on September 27, 2012, by acquiring, through donation

from the Thaw Charitable Trust, the 4,224-acre Wind River Ranch in Mora County, New Mexico.

ADDRESSES: A map depicting the approved boundary and other information regarding the Rio Mora National Wildlife Refuge and Conservation Area are available on the Internet at *http://www.fws.gov/southwest/refuges/Plan/planindex.html.*

FOR FURTHER INFORMATION CONTACT: Steve Kettler, Land Protection Planner, by U.S. mail at U.S. Fish and Wildlife Service, Division of Planning, P.O. Box 1306, Albuquerque, NM 87103–1306, or by email at *steve_kettler@fws.gov.*

SUPPLEMENTARY INFORMATION: The Service has established the Rio Mora National Wildlife Refuge in Mora County, New Mexico, and the Rio Mora Conservation Area, including portions of Colfax, Mora, and San Miguel Counties, New Mexico. The Service may pursue protection and management of wildlife resources in the conservation area through purchase of perpetual conservation easements or fee title purchase from willing sellers, or through cooperative management agreements and partnerships. These actions will contribute to maintaining the biological integrity and sustainable human uses of the area, maintaining both rare and common species, and supporting the ecological function and resiliency within the larger landscape.

The goal for the project is to protect and restore habitat in support of species recovery plans, State and regional conservation plans, and major bird conservation plans, and to maintain native species and sustainable ecosystems. The maximum long-term potential for fee and easement acquisition would be 300,000 acres within the approximately 952,000-acre Mora River watershed, which forms the boundary of the conservation area.

Within the conservation area, the Service is authorized to accept donations of land or may purchase property using the acquisition authority of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–j); the Migratory Bird Conservation Act of 1929 (16 U.S.C. 715–715d, 715e, 715f–r); the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4); and the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(b)(3)). The principal Federal funding sources to acquire property are the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–4–460l–11; funds received from this act are derived primarily from oil and gas leases on the outer continental shelf, motorboat fuel tax revenues, and sale of surplus Federal property) and the Migratory Bird Hunting and Conservation Stamp Act of 1934 (16 U.S.C. 718–718h); funds for this act are derived from the sale of federal duck stamps. There could be additional funds to acquire lands, waters, or interest therein for fish and wildlife conservation purposes through other congressional appropriations, donations, or grants from nonprofit organizations and other sources.

The Service has involved the public, agencies, partners, and legislators throughout the planning process for the refuge and conservation area. In July 2011, the Service initiated public involvement and announced public scoping meetings to be held to describe the proposed project and solicit feedback. Two public scoping meetings were held in the local area: the first in Mora, New Mexico, on July 25, 2011, and the second in Las Vegas, New Mexico, on July 26, 2011. Comments were accepted during the public scoping period from July 25, 2011, to September 19, 2011.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Service prepared an environmental assessment that evaluated three alternatives and their potential impacts on the project area. The draft environmental assessment and a draft land protection plan were made available for a public review and comment period (March 30 through May 1, 2012). Two hearings were held during this period to offer the public additional opportunities to provide input on the proposed actions and the draft documents. The first hearing was held in Mora, New Mexico, on April 12th, and the second, in Las Vegas, New Mexico, on April 13th, 2012. Over 84 landowners, citizens, and elected officials (or their representatives) attended the 2 hearings, and 8 individuals gave public comment. Afterwards the Service received an additional eight comments in written hardcopy, and via email or phone. Comments received at the hearings and by other means throughout the comment period were reviewed, added to the administrative record, and, if substantial, addressed in the environmental assessment or land protection plan.

Based on the documentation contained in the environmental assessment, a Finding of No Significant Impact was signed on June 13, 2012, for the establishment of the Rio Mora National Wildlife Refuge and Conservation Area. The Service established the Rio Mora National Wildlife Refuge and Conservation Area on September 27, 2012, by acquiring the 4,224-acre Wind River Ranch in Mora County, New Mexico.

Dated: December 12, 2012.

Benjamin N. Tuggle,

Regional Director, Southwest Region, U. S. Fish and Wildlife Service.

Editorial Note: This document was received at the Office of the Federal Register June 10, 2013.

[FR Doc. 2013–14039 Filed 6–12–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2013–N264: FF02R06000–FXRS1265022LPP–134]

Establishment of the Valle de Oro National Wildlife Refuge, Bernalillo County, New Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has established the Valle de Oro National Wildlife Refuge as a unit of the National Wildlife Refuge System. The Service established the Valle de Oro National Wildlife Refuge on September 21, 2012, with a purchase of 389 acres in Bernalillo County, New Mexico. This action completes the first of two acquisition phases, which will ultimately provide 570 acres of protected lands for public access, recreation, and environmental education.

ADDRESSES: A map depicting the approved boundary and other information regarding the Valle de Oro National Wildlife Refuge are available on the Internet at *http://www.fws.gov/southwest/refuges/Plan/planindex.html.*

FOR FURTHER INFORMATION CONTACT: Steve Kettler, Land Protection Planner, by U.S. mail at U.S. Fish and Wildlife Service, Division of Planning, P.O. Box 1306, Albuquerque, NM 87103–1306, or by email at *steve_kettler@fws.gov.*

SUPPLEMENTARY INFORMATION: On September 21, 2012, the Service purchased 389 acres of former farm land in Albuquerque's South Valley. Acquisition of these lands formally established the Valle de Oro National Wildlife Refuge in Bernalillo County, New Mexico. As an urban National Wildlife Refuge, a distinction shared by only a handful of refuges nationwide and the first for the southwestern United States, this refuge will provide

easy access and key outdoor recreation opportunities to more than 150,000 students and nearly two-thirds of the entire State population and will become a new stop on the nationally recognized Paseo del Bosque recreation trail. This refuge strongly emphasizes recreation and outdoor education for urban youth. It also serves as a gateway to other outdoor venues in the area, as well as to other refuges within the State. The project is the result of close cooperation with Bernalillo County, the Trust for Public Lands, and many other partners, as well as extensive public involvement.

The Service acquired the property using the acquisition authority of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–j) and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4). The federal funding source to acquire the property is the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–4–460l–11). Funds received from this act are derived primarily from oil and gas leases on the outer continental shelf, motorboat fuel tax revenues, and sale of surplus federal property. There could be additional funds to acquire lands, waters, or interest therein for fish and wildlife conservation purposes through other congressional appropriations, donations, or grants from non-profit organizations and other sources.

The Service has involved the public, agencies, partners, and legislators throughout the planning process for the refuge. In January of 2011, the Service initiated public involvement and announced public scoping meetings to be held to describe the proposed project and solicit feedback. Three public meetings were held in the Albuquerque metropolitan area (on February 7, 9, and 12, 2011) during the initial scoping process to identify issues to be analyzed for the proposed project.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Service prepared an environmental assessment that evaluated two alternatives and their potential impacts on the project area. The draft environmental assessment and land protection plan documents were made available for a 30-day public comment period beginning on July 15, 2011. Two public meetings were held in Albuquerque, New Mexico, on July 27 and 28, 2011, where comments were recorded by a court reporter. Over 70 people attended the meetings, and the Service received a total of 80 comments during the public comment period. Comments received at the meetings and by other means throughout the comment period were reviewed, added to the administrative record, and, if substantial, addressed in the environmental assessment or land protection plan.

Based on the documentation contained in the environmental assessment, a Finding of No Significant Impact was signed on September 23, 2011, for the establishment the Middle Rio Grande National Wildlife Refuge. In September, 2012, that name was officially changed to Valle de Oro National Wildlife Refuge. The Service established the Valle de Oro National Wildlife Refuge on September 21, 2012, with a purchase of 389 acres in Bernalillo County, New Mexico.

Dated: December 3, 2012.

Benjamin N. Tuggle,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

Editorial Note: This document was received at the Office of the Federal Register June 10, 2013.

[FR Doc. 2013–14043 Filed 6–12–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML0000 L16100000.DP0000]

Notice of Intent To Prepare an Amendment to the Mimbres Resource Management Plan and Associated Environmental Assessment for Possible Disposal of Public Land in Doña Ana County, Las Cruces, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) Las Cruces District Office, New Mexico, intends to prepare a Resource Management Plan (RMP) Amendment with an associated Environmental Assessment (EA) to analyze the possible disposal by direct sale at fair market value of 339.89 acres of BLM-administered public land in Doña Ana County in southwestern New Mexico.

DATES: This notice initiates the 30-day public scoping period to identify relevant issues. The scoping period will also be announced through local news media and on the BLM Web site (*http://www.blm.gov/nm/las cruces*). The BLM will accept scoping comments for 30 days from the date of the publication of this notice.

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

- *Email: blm_nm_lcdo_comments@blm.gov.*
- *Fax:* 575–525–4412, Attention: Kendrah Penn.
- *Mail or personal delivery:* Kendrah Penn, RMPA/EA Team Leader, BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005.

Documents pertinent to this proposal may be examined at the Las Cruces District Office at the above address.

FOR FURTHER INFORMATION CONTACT: Kendrah Penn, Realty Specialist, at the above address, by telephone at 575–525–4382, or by email at *kpenn@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Village of Hatch, New Mexico, has proposed to acquire 339.89 acres of BLM-administered land located adjacent to its industrial park. The land would be used as part of the industrial park and would give the Village of Hatch the ability to enhance its economic opportunities and provide for community expansion.

This document provides notice that the BLM Las Cruces District Office, Las Cruces, New Mexico, intends to prepare an RMP Amendment with an associated EA for the Mimbres Planning Area and announces the beginning of the scoping process and seeks public input on issues and planning criteria.

The BLM is currently considering disposal of public land in Doña Ana County, New Mexico. The public land proposed for disposal is currently identified for retention in Federal ownership in the 1993 Mimbres RMP. Therefore, the RMP must be amended to identify the public land as suitable for exchange and/or sale. The RMP Amendment will allow for direct sale of the land if all the criteria outlined by FLPMA is met and that is the alternative chosen by the BLM New Mexico State Director. The public land is a portion of and within the following area:

New Mexico Principal Meridian, New Mexico

T. 19 S., R. 4 W.,
Sec. 28, lots 1 to 3, lots 6 to 8, NE¼NE¼NE¼, W½NE¼NE¼, N½SE¼NE¼NE¼, W½NE¼, W½SE¼NE¼, W½E½W½NW¼SE¼, W½W½NW¼SE¼, W½NE¼NW¼SW¼SE¼, and NW¼NW¼SW¼SE¼.

The area described contains 339.89 acres. Any area described as a half (½)

of a half (½) or a half (½) of a half (½) of a half (½) is based on the proper subdivision of section as per the Manual of Survey Instructions.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the planning area have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. These issues are:

1. Should public land be disposed of in order to promote economic opportunities and community expansion for the Village of Hatch, New Mexico?
2. What potential impacts would this proposed action have on the ability of the BLM to manage surrounding parcels of land?
3. What effects would this proposed action have on existing uses in the area?
4. What important public obectives will be served?

Proposed planning criteria include the following:

1. The RMP Amendment/EA process will be in compliance with the Federal Land Policy and Management Act, the National Environmental Policy Act, and applicable laws, regulations, and policies.
2. The land use plan amendment process will be governed by the planning regulations at 43 CFR part 1610 and the BLM Land Use Planning Handbook H–1601–1.
3. Lands affected by the proposed plan amendment only apply to public surface and mineral estate managed by the BLM. No decisions will be made relative to non-BLM-administered land or non-Federal minerals.
4. Public participation will be an integral part of the planning process.
5. The plan amendment will recognize all valid existing rights.
6. The RMP Amendment/EA will strive to be consistent with existing non-Federal plans and policies, provided the decisions in the existing plans are consistent with the purposes, policies, and programs of Federal laws, and regulations applicable to public lands. The RMP Amendment will consider present and potential uses of public land.
7. The RMP Amendment will consider impacts of uses on adjacent or nearby non-Federal lands and on non-Federal land surface over federally-owned minerals.

The BLM will evaluate identified issues to be addressed in the plan amendment and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the plan amendment as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan amendment.

The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Minerals and geology, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, water and air.

The public may submit comments on issues and planning criteria in writing directly to the BLM using one of the methods listed in the **ADDRESSES** section above. Comments should be submitted within 30 days from the date of the publication of this notice.

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

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

Bill Childress,

District Manager, Las Cruces.

[FR Doc. 2013–14030 Filed 6–12–13; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Docket No 2959]

Certain TV Programs, Literary Works for TV Production and Episode Guides Pertaining to Same Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain TV Programs, Literary Works for TV Production and Episode Guides Pertaining to Same,* DN 2959; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS* [1], and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC* [2]. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS* [3]. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of E.T. Radcliffe, LLC and Emir Tiar on June 7, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain TV programs, literary works for TV production and episode guides pertaining to same. The complaint names as respondents: The Walt Disney Company of Burbank, CA; Thunderbird Films, Inc. of Los Angeles, CA and Mindset Television, Inc. of Canada.

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2959'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS* [5].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: June 7, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–14003 Filed 6–12–13; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–491–497 (Final)]

Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam Scheduling of the Final Phase of Countervailing Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation Nos. 701–TA–491–497 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam of frozen warmwater shrimp, provided for in subheadings 0306.17.00, 1605.21.10 and 1605.29.10 of the Harmonized Tariff Schedule of the United States, that are preliminarily found to be subsidized by the Governments of China, India, Malaysia, Thailand, and Vietnam and that are alleged to be subsidized by the Governments of Ecuador and Indonesia.[1] [2]

[1] The Department of Commerce preliminarily determined that imports of frozen warmwater shrimp from Ecuador and Indonesia are not being and are not likely to be subsidized by the Government of Ecuador or the Government of Indonesia.

[2] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form, regardless of size.

''The frozen warmwater shrimp and prawn products included the scope, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

''The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

''Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations (including dusted shrimp), which are not 'prepared meals,' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope.

''Excluded from the scope are: (1) Breaded shrimp and prawns; (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled; (4) shrimp and prawns in prepared meals; (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns; and (7) certain 'battered shrimp.'

'''Battered shrimp' is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a 'dusting' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

''The products included in the scope of these investigations are currently classified under the

Continued

For further information concerning the conduct of the final phase of these investigations, hearing procedures, 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 and C (19 CFR part 207).

DATES: *Effective Date:* June 4, 2013.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202–205–3176), 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 investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China, India, Malaysia, Thailand, and Vietnam of frozen warmwater shrimp.[3] These investigations are being instituted in response to a petition filed on December 28, 2012, by the Coalition of Gulf Shrimp Industries, Biloxi, MS.

Participation in the investigations 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 the final phase of these investigations 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, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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 the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to these investigations. A party granted access to BPI in the preliminary phase of the investigations 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 final phase of these investigations will be placed in the nonpublic record on July 31, 2013, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on August 13, 2013, 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 August 6, 2013. 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 August 9, 2013, 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), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is August 7, 2013. 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 207.25 of the Commission's rules. The deadline for filing posthearing briefs is August 20, 2013. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before August 20, 2013. On September 12, 2013, 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 September 16, 2013, but such final comments must not contain new factual information and must otherwise comply with section 207.30 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. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 Fed. Reg. 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

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 investigations must be served on all other parties to the investigations (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.

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following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30 and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.''

[3] The Department of Commerce preliminarily determined that imports of frozen warmwater shrimp from Ecuador and Indonesia are not being and are not likely to be subsidized by the Government of Ecuador or the Government of Indonesia.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 7, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–14010 Filed 6–12–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–792]

Certain Static Random Access Memories and Products Containing Same; Commission Determination Affirming a Final Initial Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the initial determination issued by the presiding administrative law judge (''ALJ'') finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, (''section 337'') in the above identified investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 28, 2011, based on a complaint filed by Cypress Semiconductor Corporation of San Jose, California (''Cypress''). 76 FR 45295 (July 28, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain static random access memories and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,534,805; 6,651,134; 6,262,937 and 7,142,477. The notice of investigation named the following entities as respondents: GSI Technology, Inc. of Sunnyvale, California (''GSI''); Alcatel-Lucent of Paris, France (''Alcatel-Lucent''); Alcatel-Lucent USA, Inc. of Murray Hill, New Jersey (''Alcatel-Lucent USA''); Telefonaktiebolaget LM Ericsson of Stockholm, Sweden (''Ericsson LM''); Ericsson, Inc. of Plano, Texas (''Ericsson''); Motorola Solutions, Inc. of Schaumburg, Illinois (''Motorola''); Motorola Mobility, Inc. of Libertyville, Illinois (''MMI''); Arrow Electronics, Inc. of Melville, New York (''Arrow''); Nu Horizons Electronics Corp. of Melville, New York (''Nu Horizons''); Cisco Systems, Inc. of San Jose, California (''Cisco''); Hewlett Packard Company/Tipping Point of Palo Alto, California (''HP''); Avnet, Inc. of Phoenix, Arizona (''Avnet''); Nokia Siemens Networks US, LLC of Irving, Texas (''Nokia US''); Nokia Siemens Networks B.V. of Zoetermeer, Netherlands (''Nokia''); and Tellabs of Naperville, Illinois (''Tellabs''). The Office of Unfair Import Investigations is not a party to this investigation.

The following respondents were terminated from the investigation based on settlement agreements, consent orders, or withdrawal of allegations from the complaint: Alcatel-Lucent, Alcatel-Lucent USA, Ericsson, Arrow, Nu Horizons, Nokia US, and Nokia. The following respondents were terminated from the investigation based upon grant of summary determination of no violation of section 337: MMI, HP, Motorola, Tellabs, and Ericsson LM. The following respondents remain in the investigation: GSI, Cisco, and Avnet (collectively, ''Respondents'').

On October 25, 2012, the ALJ issued his final ID (''ID''), finding no violation of section 337 by the Respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction, *in rem* jurisdiction over the accused products, and *in personam* jurisdiction over the Respondents. The ALJ also found that the importation requirement of section 337 (19 U.S.C. 1337(a)(1)(B)) has been satisfied. The ALJ, however, found that the accused products do not infringe the asserted patent claims. The ALJ also found that Cypress failed to establish the existence of a domestic industry that practices the asserted patents under 19 U.S.C. 1337(a)(2) for failure to establish the technical prong of the domestic industry requirement. The ALJ did not consider the validity or enforceability of the asserted patents.

On November 7, 2012, Cypress filed a petition for review of the ID. That same day, Respondents filed a contingent petition for review. On November 15, 2012, the parties filed responses to the petition and contingent petition for review.

On December 21, 2012, the Commission determined to review the ID in its entirety and remanded the investigation to the ALJ to make findings on invalidity and unenforceability, issues litigated by the parties but not addressed in the final ID. On February 25, 2013, the ALJ issued his Remand ID (''RID''), finding that the asserted patents are enforceable and not invalid.

On March 11, 2013, Respondents filed a petition for review of the RID, challenging the ALJ's findings that the asserted patents are enforceable and not invalid. On March 19, 2013, Cypress filed a response to the petition for review.

On April 26, 2013, the Commission determined to review the RID in part, *i.e.,* with respect to invalidity. *See* 78 FR 25767 (May 2, 2013). The Commission declined Respondents' request to take judicial notice of the on-going reexamination proceedings at the United States Patent and Trademark Office regarding the '805 patent and admit filings in that case into evidence in this investigation.

Having examined the record of this investigation, including the ALJ's final ID and RID, the petitions for review, and the responses thereto, the Commission has determined to affirm the ALJ's finding of no violation of section 337 with the modifications set forth in the Commission opinion issued herewith. Specifically, with respect to the '805 patent, the Commission affirms the following findings: (1) Cypress failed to prove that the accused products infringe the asserted claims; (2) Cypress failed to establish the technical prong of the domestic industry requirement; and (3) Respondents failed to establish by clear and convincing evidence that U.S. Patent No. 6,677,649 to Osada et al. or U.S. Patent No. 6,445,041 to Ishida et al. anticipate the asserted claims. The Commission reverses the ALJ's finding that the publication by Ishida, entitled ''Novel 6T–SRAM Cell Technology Designed with Rectangular Patterns

Scalable beyond 0.18 μm Generation and Desirable for Ultra High Speed Operation'' does not anticipate the asserted claims of the '805 patent. Regarding the '134, '937, and '477 patents, the Commission affirms the following findings: (1) Cypress failed to prove that the accused products infringe the asserted claims; (2) Cypress failed to establish the technical prong of the domestic industry requirement; and (3) Respondents failed to establish by clear and convincing evidence that the cited prior art references anticipate the asserted claims. The Commission adopts the ID and RID in their entirety as modified and/or supplemented by the Commission opinion. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: June 7, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–14011 Filed 6–12–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–013]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: June 18, 2013 at 12:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1110 (Review) (Sodium Hexametaphosphate from China). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 28, 2013.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 11, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–14177 Filed 6–11–13; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on May 16, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Pistoia Alliance, Inc. 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, Nicola Fantini (individual), Zurich, SWITZERLAND; and Ingrid Akerblom (individual), Lansdale, PA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. 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 July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on March 8, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 2013 (78 FR 20141).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–14002 Filed 6–12–13; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that, on May 10, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between February 2013 and May 2013 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM 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 November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on February 11, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 2013 (78 FR 14836).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–13995 Filed 6–12–13; 8:45 am]

BILLING CODE 4410–11–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50–454, 50–455, 50–456, 50–457; NRC–2013–0126]

Byron Nuclear Station, Units 1 and 2, and Braidwood Nuclear Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; Notice of receipt and availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received an application, dated May 29, 2013, from Exelon Generation Company, LLC, filed

pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and according to NRC's regulations, to renew the operating licenses for the Byron Nuclear Station, Units 1 and 2 (Byron), and the Braidwood Nuclear Station, Units 1 and 2 (Braidwood). Renewal of the licenses would authorize the applicant to operate each facility for an additional 20-year period beyond the period specified in the respective current operating licenses.

ADDRESSES: Please refer to Docket ID NRC–2013–0126 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0126. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application is available in ADAMS under Accession No. ML131550528. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Daily, Senior Project Manager, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–3873; email: *John.Daily@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The current operating licenses for Byron expire as follows: Unit 1 (NPF–37) on October 31, 2024, and Unit 2 (NPF–66) on November 6, 2026. The current operating licenses for Braidwood expire as follows: Unit 1 (NPF–72) on October 17, 2026, and Unit 2 (NPF–77) on December 18, 2027. All four units are pressurized-water reactors designed by Westinghouse; Byron is located near Byron, IL, and Braidwood is located near Braidwood, IL. The acceptability of the tendered application for docketing, and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, or through the internet from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML131550528. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* Persons who do not have access to the internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, extension 4737, or by email to *pdr.resource@nrc.gov.*

A copy of the license renewal application for Byron, Units 1 and 2, and Braidwood, Units 1 and 2, is also available to local residents near the respective sites at both the Byron Public Library, 100 S. Washington Street, Byron, IL 61010, and the Fossil Ridge (Braidwood) Public Library, 386 W. Kennedy Road, Braidwood, IL 60408.

Dated at Rockville, Maryland, this June 6, 2013.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–14082 Filed 6–12–13; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Computer Matching Program

AGENCY: Office of Personnel Management.

ACTION: Notice of computer matching between the Office of Personnel Management and the Social Security Administration (CMA #1045).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 published June 19, 1989), and OMB Circular No. A–130 (revised November 28, 2000), ''Management of Federal Information Resources,'' the Office of Personnel Management (OPM) is publishing notice of its new computer matching program with the Social Security Administration (SSA).

DATES: OPM will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs (OMB). The matching program will begin 30 days after the **Federal Register** notice has been published or 40 days after the date of OPM's submissions of the letters to Congress and OMB, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months thereafter. Subsequent matches will run until one of the parties advises the other in writing of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESSES: Send comments to Deon Mason, Chief, Business Services, Office of Personnel Management, Room 4316, 1900 E. Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Teresa R. Williams at (202) 606–2187.

SUPPLEMENTARY INFORMATION:

A. General

The Privacy Act (5 U.S.C. 552a), as amended, establishes the conditions under which computer matching involving the Federal Government could be performed and adds certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agencies participating in the matching programs;

(2) Obtain the approval of the match agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, termination or denying an individual's benefits or payments.

B. OPM Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of OPM's computer matching programs comply with the requirements of the Privacy Act, as amended. Following is the notice of the Computer Matching Program between OPM and SSA.

Notice of Computer Matching Program, Office of Personnel Management With the Social Security Administration

A. Participating Agencies

OPM and SSA.

B. Purpose of the Matching Program

The purpose of this agreement is to establish the conditions under which SSA will disclose tax return information to OPM. OPM will match SSA's data with OPM's records on disability retirees under age 60, disabled adult child survivors, certain retirees in receipt of supplemental benefits under the Federal Employees Retirement System (FERS), and certain annuitants receiving discontinued service retirement benefits under the Civil Service Retirement System (CSRS). Law limits the amount these retirees, survivors, and annuitants can earn while retaining benefits paid to them. Retirement benefits cease upon re-employment in Federal service for discontinued service annuitants. OPM will use SSA data to determine continued eligibility for benefits.

C. Authority for Conducting the Matching Program

This agreement is executed under the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, and the regulations and guidance promulgated thereunder.

Legal authorities for the disclosures under this agreement are 5 U.S.C. 8337(d), 8341(a)(4)(B), 8344(a)(4)(b), and 8468, which establish earnings limitations for certain CSRS and FERS annuitants. The authority to terminate benefits can be found in 5 U.S.C. 8341(e)(3)(B) and 8443(b)(3)(B). The Internal Revenue Code, at 26 U.S.C. 6103 (l)(11), requires SSA to disclose tax return information to OPM upon request for purposes of the administration of chapters 83 and 84 of title 5 U.S.C.

D. Categories of Records and Individuals Covered by the Match

SSA will disclose to OPM information from the Earnings Recording and Self-Employment Income System, SSA/OEEAS, 60–0059, last published on January 11, 2006 (71 FR 1819).

OPM will disclose to SSA a finder file from the Civil Service and Insurance Records, OPM/Central-1, published on March 20, 2008 (73 FR 15013).

The systems of records involved in this computer matching program have routine uses permitting the disclosures needed to conduct this match.

E. Privacy Safeguards and Security

The Privacy Act (5 U.S.C. 552a(o)(1)(G)) requires that each matching agreement specify procedures for ensuring the administrative, technical and physical security of the records matched and the results of such programs.

All Federal agencies are subject to the Federal Information Security Management Act of 2002 (FISMA) (44 U.S.C. 3541 *et seq.*), related OMB circulars and memorandum (e.g., OMB Circular A–130 and OMB M–06–16), National Institute of Science and Technology directives, and the Federal Acquisition Regulations. These laws, circulars, memoranda directives and regulations include requirements for safeguarding Federal information systems and personally identifiable information used in Federal agency business processes, as well as related reporting requirements. OPM and SSA recognize that all laws, circulars, memoranda, directives and regulations relating to the subject of this agreement and published subsequent to the effective date of this agreement must also be implemented, if mandated.

FISMA requirements apply to all Federal contractors and organizations or sources that possess or use Federal information, or that operate, use, or have access to Federal information systems on behalf of an agency. OPM will be responsible for oversight and compliance of its contractors and agents. Both OPM and SSA reserve the right to conduct onsite inspection to monitor compliance with FISMA regulations.

F. Inclusive Dates of the Match

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–14056 Filed 6–12–13; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Public Availability of FY 2012 Service Contract Inventories

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Office of Personnel Management (OPM) is publishing this notice to advise the public of the availability of the FY 2012 Service Contract Inventory. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* OPM has posted its inventory and a summary of the inventory on the OPM homepage at the following link: *http://www.opm.gov/about-us/doing-business-with-opm/contracting-opportunities/#url=Business-Opportunities.*

FOR FURTHER INFORMATION CONTACT: William Curto at (202) 606–1584 or by mail at U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Please cite ''2012 Service Contract Inventory'' in all correspondence.

U.S. Office of Personnel Management.

Elaine Kaplan,

Acting Director.

[FR Doc. 2013–14057 Filed 6–12–13; 8:45 am]

BILLING CODE 6325–44–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–23; Order No. 1741]

Negotiated Service Agreement

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to the 2013 Singapore Post Limited Agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 14, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On June 4, 2013, the Postal Service filed notice, pursuant to 39 CFR 3010.40 *et seq.,* that it has entered into a modification of a bilateral agreement for inbound market dominant services with Singapore Post Limited (2013 Agreement).[1] The 2013 Agreement concerns an extension to March 31, 2014 and revised Annex 1 rates. Notice at 1–2. The 2013 Agreement, if approved, would supersede a recently-approved extension to July 31, 2013.[2] Notice at 2.

The Postal Service seeks to have the 2013 Agreement included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product on grounds of functional equivalence to the agreement filed in Docket No. MC2010–35.[3] *Id.*

II. Contents of Filing

Compliance with filing requirements. The Postal Service's filing consists of a Modified Agreement and supporting documents addressing compliance with 39 U.S.C. 3633 and 39 CFR 3015.5 (filed under seal); a public Excel file containing redacted versions of financial workpapers filed under seal; the Notice; and four attachments to the Notice. Attachment 1 is the Postal Service's Application for Non-Public Treatment of the material filed under seal. Attachment 2 is a redacted copy of the 2013 Agreement. Attachments 3 and 4, respectively, are redacted copies of the Docket No. R2013–5 Modification and the Docket No. R2012–1 Singapore Post Agreement.

The Postal Service states that the rates in the 2013 Agreement are expected to become effective on August 1, 2013; asserts that the requisite 45 days' advance notice is being provided; and identifies a Postal Service official as a contact for further information. *Id.* at 4. The Postal Service identifies the parties to the 2013 Agreement as the United States Postal Service and Singapore Post Limited, the postal operator for Singapore. *Id.*

The Postal Service states that other than extending the current Singapore Post Agreement and revising the rates in Annex 1 of that Agreement, the 2013 Agreement does not materially change the terms of the Singapore Post Agreement. *Id.* at 5. It therefore requests that the Commission refer to the notice filed in Docket No. R2012–1 for a discussion of certain enhancements (related to the performance of mail preparation, processing, transportation, or other functions) and actions to assure that the 2013 Agreement will not result in unreasonable harm to the marketplace. *Id.* at 5–6.

Rule 3010.43—data collection plan. The Postal Service requests, based on reasons described in the Notice filed in Docket No. R2012–1 and consistent with Order Nos. 995 and 1610, that the Singapore Post Agreement Modification Three be excepted from separate reporting under 39 CFR 3055.2(a)(3). *Id.* at 6.

Consistency with applicable statutory criteria. The Postal Service states that under 39 U.S.C. 3622, the criteria for the Commission's review are whether the 2013 Agreement (1) Improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers.[4] Notice at 6–7. The Postal Service states that Part I.A. of its Notice addresses 39 U.S.C. 3622(c)(10)(A) and (B). *Id.* at 7. The Postal Service asserts that there are no entities similarly situated to Singapore Post Limited in their ability to tender broad-based Letter Post flows from Singapore under similar operational conditions, nor are there any other entities that serve as a designated operator for Letter Post originating in Singapore. *Id.* Based on the Commission's finding that the Docket No. R2012–1 Singapore Post Agreement and the Docket No. R2013–5 Modification met the criteria in 39 U.S.C. 3622(c)(10), the Postal Service respectfully urges the Commission to act promptly by allowing the 2013 Agreement to be implemented under 39 CFR 3010.40. *Id.*

III. Commission Action

The Commission, in conformance with rule 3010.44, hereby establishes Docket No. R2013–8 to consider issues raised by the Notice. The Commission invites comments from interested persons on whether the 2013 Agreement is consistent with 39 U.S.C. 3622 and the requirements of 39 CFR part 3010. Comments are due no later than June 14, 2013. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*). Information on how to obtain access to non-public material appears at 39 CFR 3007.40.

The Commission appoints Derrick D. Dennis to serve as Public Representative in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2013–8 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Derrick D. Dennis is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in this proceeding are due no later than June 14, 2013.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

[1] Notice of United States Postal Service of Filing Additional Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (with Singapore Post Limited), June 4, 2013 (Notice). Underlying agreements include the Docket No. R2012–1 (Singapore Post Agreement) and the Docket No. R2013–5 Modification (to the Singapore Post Agreement). The Postal Service refers to the 2013 Agreement filed in this case as Modification Three.

[2] *See* Docket No. R2013–5, Order No. 1721, Order Granting Motion for Temporary Relief, May 17, 2013.

[3] A copy of the Singapore Post Agreement Modification Two that was the subject of Docket No. R2013–5 is included as Attachment 3. A redacted copy of the Singapore Post Agreement filed in Docket No. R2012–1 is included as Attachment 4.

[4] *See* 39 U.S.C. 3622(c)(10)(A) and (B).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–14020 Filed 6–12–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–65; Order No. 1740]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent-filed Postal Service request to add an additional negotiated service agreement with Germany's foreign postal operator, Deutsche Post. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 14, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On June 6, 2013, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, stating that it has entered into an additional negotiated service agreement (Agreement) with Germany's foreign postal operator, Deutsche Post.[1] The Postal Service seeks to have the inbound portion of the Agreement, which concerns delivery of inbound Air and Surface CP [2] and EMS in the United States, included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010–34) product on the competitive product list. Notice at 3.

II. Contents of Filing

The Postal Service's filing consists of the Notice, redacted financial workpapers, and four attachments. Attachment 1 is a redacted copy of the Agreement. Attachment 2 is the certified statement required by 39 CFR 3015.5(c)(2). Attachment 3 is a redacted copy of Governors' Decision No. 10–3. Attachment 4 is an application for non-public treatment of material.

The Agreement's intended effective date is July 1, 2013. *Id.* at 2. The rates for inbound Air and Surface CP and EMS included in the Agreement are to remain in effect until either party terminates the Agreement in accordance with Article 9. Attachment 1 at 3. Article 9 permits either party to terminate the Agreement at the end of a calendar quarter without cause upon 90 days written notice. *Id.*

The Notice reviews the regulatory history of the Inbound Competitive Multi-Service Agreements with Foreign Operators 1 product and identifies the agreement with Koninklijke TNT Post BV and TNT Pakketservice Benelux BV (approved in Docket No. CP2010–95) as the baseline agreement for purposes of determining functional equivalence.[3] *Id.* at 2–3. It asserts that the Agreement fits within applicable Mail Classification Schedule language and addresses functional equivalency with the baseline agreement, including similarity of cost characteristics. *Id.* at 4–5. The Postal Service also identifies differences between the Agreement and the baseline agreement, such as the addition of several articles, revisions to existing articles, and new annexes, but asserts that these differences do not detract from a finding of functional equivalency. *Id.* at 5–8.

III. Commission Action

Notice of establishment of docket. The Commission establishes Docket No. CP2013–65 for consideration of matters raised by the Notice. The Commission appoints James F. Callow to serve as Public Representative in this docket. Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3632, 3633, and 3642 and the requirements of 39 CFR parts 3015 and 3020. Comments are due no later than June 14, 2013. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*). Information on obtaining access to sealed material appears in 39 CFR part 3007.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2013–65 for consideration of matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments are due no later than June 14, 2013.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–14062 Filed 6–12–13; 8:45 am]

BILLING CODE 7710–FW–P

[1] United States Postal Service Notice of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator (Deutsche Post), June 6, 2013 (Notice).

[2] "CP" is an abbreviation used to identify or reference international parcel post (from the French phrase *colis postaux,* "postal package").

[3] The Postal Service identifies Governors' Decision No. 10–3 as the enabling Governors' Decision. *Id.* at 5. The status of the TNT Agreement as the baseline agreement was confirmed in Docket No. CP2011–69, Order No. 840, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 7, 2011.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69716; File No. SR–CBOE–2013–060]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 6.74A

June 7, 2013.

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 May 31, 2013, 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 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 delay the operative date of a recent change to Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

6.74A. There are no proposed changes to the rule text.

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

On May 2, 2013, the Exchange submitted a rule change, which became effective on that date, to amend Rule 6.74A related to the Automated Improvement Mechanism (''AIM'') to provide Trading Permit Holders that initiate an AIM auction with the option to auto-match competing prices from other market participants up to a designated limit price.[3] The proposed rule change in that filing became effective on filing and was set to become operative on June 1, 2013.

The purpose of this rule filing is to delay the operative date of the change to Rule 6.74A in rule filing SR–CBOE–2013–048 until CBOE has completed the necessary changes to its system to implement this new AIM feature. The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 90 days following the effective date. The implementation date will be no later than 180 days following the effective date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that delaying the operative date of this change to AIM will protect investors because it will provide the Exchange with sufficient time to complete its system work and perform sufficient testing that is necessary to ensure that this new AIM feature will function as described in rule filing SR–CBOE–2013–048.

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. This proposed rule change delays the operative date of the change to AIM for all Trading Permit Holders, and the Exchange will announce the new operative date in a Regulatory Circular that is available for all Trading Permit Holders. Additionally, following the new operative date of the change to AIM, any Trading Permit Holder that initiates an AIM auction will have the option to use the new feature to auto-match up to a limit price.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

i. Significantly affect the protection of investors or the public interest;

ii. Impose any significant burden on competition; and

iii. Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the proposed rule change should provide the Exchange with sufficient time to complete the necessary system work and perform sufficient testing to ensure that this new AIM feature functions as described in rule filing SR–CBOE–2013–048 upon implementation. The Commission believes that the waiver of the operative delay is consistent with the protection of investors and the public interest. The Commission also notes that the filing introducing this new functionality, SR–CBOE–2013–048, was subject to a 30-day operative delay, and the Commission did not receive any comments on that proposal. Accordingly, the Commission hereby designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[3] Securities Exchange Act Release No. 34–69528 (May 7, 2013), 78 FR 28265 (May 14, 2013) (SR–CBOE–2013–048).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] *Id.*

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For 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. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2013–060 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–2013–060. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–060, and should be submitted on or before July 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14000 Filed 6–12–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69712; File No. SR–NASDAQ–2013–076]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make a Clerical Correction to the Nasdaq Rulebook

June 6, 2013.

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 May 28, 2013, The NASDAQ Stock Market LLC (''Nasdaq'' 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 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 make a clerical correction to the Nasdaq rulebook.

The text of the proposed rule change is below; proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4120. Limit Up-Limit Down Plan and Trading Halts

(a) No Change

(b) No Change

(c) Procedure for Initiating a Trading Halt

(1)–(6) No Change

(7)(A) No Change

(B) A trading halt initiated under Rule 4120(a)(7) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 15-minute Display Only Period during which market participants may enter quotes and orders in that security in Nasdaq systems. In addition, beginning at [7]*4:00* a.m., market participants may enter Market Hours Day Orders in a security that is the subject of an Initial Public Offering on Nasdaq and designate such orders to be held until the beginning of the Display Only Period, at which time they will be entered into the system. At the conclusion of the 15-minute Display Only Period, the security shall be released for trading unless Nasdaq extends the Display Only Period for up to six additional 5-minute Display Only Periods pursuant to subparagraph (C) or (D) below. At the conclusion of the Display Only Period(s), there shall be an additional delay of between zero and 15 seconds (randomly selected) and then trading shall resume pursuant to Rule 4753.

(C)–(D) No Change

* * * * *

(b) Not applicable.

(c) Not applicable.

* * * * *

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

On March 5, 2013, the Exchange filed a proposed rule change to extend the pre-market hours of the Exchange to 4:00 a.m. EST, from the current opening time of 7:00 a.m. EST (the ''4 a.m. Filing'').[3] The changes proposed in that filing became operative on March 18, 2013. The change to the text of rule 4120(c)(7)(B) was inadvertently omitted from that filing. The purpose of this filing is to change the reference to ''7 a.m.'' in rule 4120(c)(7)(B) to ''4:00 a.m.'' in order to make it consistent with the other changes in the 4 a.m. Filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69151 (March 15, 2013), 78 FR 17464 (March 21, 2013) (SR–NASDAQ–2013–033).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

investors and the public interest. The original 4 a.m. Filing promoted this goal by offering additional trading opportunities to NASDAQ members that desire them, without imposing burdens on NASDAQ members that do not. This proposal merely corrects a rule to make it consistent with the previous filing.

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. As in the original filing, NASDAQ believes that offering a competing early trading session is pro-competitive in that it will increase competition for order flow, for execution services and for listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) [8] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[9] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will provide greater clarity and consistency to NASDAQ's rules applicable to trading hours and does not negatively impact the rights of any of the Exchange's members. For this reason, the Commission designates the proposed rule change to be operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–076 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–NASDAQ–2013–076. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NASDAQ. 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–NASDAQ–2013–076, and should be submitted on or before July 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13998 Filed 6–12–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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 Commission has determined to waive the requirement that NASDAQ provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[8] 17 CFR 240.19b–4(f)(6).

[9] Rule 19b–4(f)(6)(iii).

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69718; File No. SR–NASDAQ–2012–117]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Withdrawal of Proposed Rule Change With Respect to INAV Pegged Orders for ETFs

June 7, 2013.

On October 2, 2012, The NASDAQ Stock Market LLC (''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 amend NASDAQ Rule 4751(f)(4) to include a new Intraday Net Asset Value (''INAV'') Pegged Order for Exchange-Traded Funds (''ETFs'') where the component stocks underlying the ETFs are U.S. Component Stocks as defined by Rule 5705(a)(1)(C) and 5705(b)(1)(D). The proposed rule change was published for comment in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Federal Register on October 18, 2012.[3] The Commission received one comment letter on the proposal.[4] On November 21, 2012, pursuant to Section 19(b)(2) of the Act,[5] the Commission extended the time period for Commission action on the proposed rule change to January 16, 2013.[6] The Commission thereafter received one response letter from the Exchange.[7] On January 16, 2013, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[8] The Commission thereafter received one comment letter and one response letter from the Exchange.[9] On April 11, 2013, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change.[10] On June 6, 2013, the Exchange withdrew the proposed rule change (SR–NASDAQ–2012–117).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–13999 Filed 6–12–13; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 68042 (Oct. 12, 2012), 77 FR 64167.

[4] *See* Letter from Dorothy Donohue, Deputy General Counsel, Investment Company Institute, dated Nov. 8, 2012.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 68279, 77 FR 70857 (Nov. 27, 2012).

[7] *See* Letter from Stephen Matthews, Senior Associate General Counsel, NASDAQ OMX, dated Jan. 15, 2013.

[8] *See* Securities Exchange Act Release No. 68672, 78 FR 4949 (Jan. 23, 2013).

[9] *See* Letter from Dorothy Donohue, Deputy General Counsel, Investment Company Institute, dated Feb. 13, 2013. *See* Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX, dated Feb. 27, 2013.

[10] *See* Securities Exchange Act Release No. 69363, 78 FR 22925 (Apr. 17, 2013).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69717; File No. SR–Phlx–2013–60]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Schedule of Fees and Rebates for Execution of Quotes and Orders on NASDAQ OMX PSX

June 7, 2013.

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 May 31, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes changes to its schedule of fees and rebates for execution of quotes and orders on NASDAQ OMX PSX (''PSX''). Phlx proposes to implement the proposed rule change on June 3, 2013. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx is proposing two modifications to its schedule of fees and rebates for transactions occurring on PSX.[3] First, the Exchange currently charges a fee of $0.00275 per share executed for orders in securities listed on The NASDAQ Stock Market (''NASDAQ'') or the New York Stock Exchange (''NYSE'') entered through a PSX market participant identifier (''MPID'') through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month. On May 1, 2013, Phlx submitted a proposed rule change that would have, among other things, set the applicable fee for this volume tier at $0.0028 per share executed.[4] When that proposed rule change was rejected for unrelated reasons, Phlx submitted another proposed rule change to modify fees on May 3, 2013.[5] Because, however, the change filed on May 3 did not apply retroactively to May 1, Phlx determined that it would be advisable to set the applicable fee at $0.00275 per share executed for the month of May, to reflect the fact that member organizations qualifying for the tier would be paying the pre-existing higher rate of $0.0030 per share executed for transactions occurring on May 1 and 2. Phlx is now proposing to set the applicable fee at the originally intended rate of $0.0028 per share executed.

Second, the Exchange proposes to modify its rebate tier of $0.0028 per share executed for displayed quotes/orders entered by a member organization that provides an average daily volume of 2 million or more shares of liquidity during the month by also requiring that (i) the quote/order is entered through an MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours[6] in the security that is the subject of the quote/order, or (ii) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities. A member organization is not required to register as a PSX Market Maker in order to qualify for the pricing tier. Rather, the trading data compiled by the Exchange's systems on an ongoing basis allow it to determine which member organizations and MPIDs satisfy the requirements for the tier, and Phlx will use this information to determine the applicable rebate rate to reflect in each member organization's monthly bill. To the extent that a member organization satisfies the requirements for the tier

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The changes apply to securities priced at $1 or more per share.

[4] SR–Phlx–2013–47 (May 1, 2013).

[5] Securities Exchange Act Release No. 69588 (May 15, 2013), 78 FR 29801 (May 21, 2013) (SR–Phlx–2013–51).

[6] Phlx is adding a footnote to the fee schedule defining regular market hours to mean ''9:30 a.m. through 4:00 p.m. Eastern Time, or such shorter period as may be designated by the Exchange on a day when PSX closes early'' (*e.g.,* the day after Thanksgiving).

during a particular month, the rebate will apply throughout that month.

The overall purpose of this change is to use financial incentives to encourage member organizations to increase the extent to which they choose to offer displayed liquidity at the inside market through PSX.[7] In doing so, the Exchange hopes to increase the attractiveness of PSX as a trading venue and benefit all of its market participants by increasing the extent to which liquidity is available on PSX at or near the national best bid and/or national best offer. This pricing tier is similar to programs that are in effect at NASDAQ and NASDAQ OMX BX (''BX'') as well as similar programs for options that have been in effect at other national securities exchanges, under which the availability of a particular fee or rebate is conditioned upon the extent to which quotes/orders are at or near the inside market.[8]

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal to condition the availability of a rebate tier of $0.0028 per share executed upon the satisfaction of stipulated requirements for volume and extent of time with quotes/orders at the national best bid and/or national best offer is reasonable because it will condition the availability of a higher rebate tier on the extent to which a member organization makes significant contributions to PSX and its market quality by providing liquidity in the aggregate and by maintaining trading interest at prices favorable to market participants on the opposite side of the market. Moreover, the proposed change is consistent with an equitable allocation of fees because the rebate is provided to member organizations that benefit other market participants through high levels of liquidity provision and consistent quoting at the NBBO. In instances where a member organization's contribution to PSX's time at the inside is limited to a small number of securities, the rebate is allocated solely to transactions in the securities where the member organization achieves time at the inside requirements. Conversely, where the member organization makes notable market quality contributions across 500 securities, the rebate is allocated to all of the member organization's displayed quotes/orders, to reflect the more significant contribution of the member organization to supporting transactions at best prices and PSX's overall attractiveness as a trading venue. The proposal is not unreasonably discriminatory because the rebate is consistent with the benefits provided by market participants receiving it, and because the Exchange offers alternative means to receive a rebate that is only slightly lower ($0.0026 per share executed) and that has very modest liquidity requirements associated with it. The change does not result in any burden on competition that is not necessary or appropriate; rather, the change will promote competition by using pricing incentives to encourage market participants to quote at the inside market to a greater extent, thereby increasing the attractiveness of PSX as a trading venue. Although the tier allows members qualifying for it to receive a higher rebate than other market participants, this does not unduly burden competition because the difference between the applicable rebate and the next lowest rebate is only $0.0002 per share executed, and Phlx believes that the difference is commensurate with the benefits provided through satisfaction of the tier's volume and quoting requirements.

The change with respect to the fee charged for orders in securities listed on NASDAQ or NYSE that are entered through a PSX MPID through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month is reasonable because it reflects a small increase of $0.00005 per share executed. Moreover, the fee in question is consistent with the requirements of SEC Rule 610(c) under Regulation NMS.[11] In adopting that rule, the Commission found that fees not in excess of $0.0030 per share executed would promote the objective of equal regulation and preventing excessive fees.[12] The change is consistent with an equitable allocation of fees because the modified fee applicable to the volume tier in question remains lower than the fee charged to member organizations not achieving the tier, and therefore continues to provide a financial incentive for member organizations to achieve higher volume levels at PSX. The change is not unfairly discriminatory because the resulting fee is not higher than the fee that other members may achieve through the use of routable orders. Finally, the fee change does not unduly burden competition because affected member organizations will continue to pay an access fee that is lower than the base rate of $0.0030 per share executed, and therefore their ability to compete will not be impacted; rather, they will continue to pay a comparatively lower fee that reflects a volume-based discount, conceptually similar to volume-based pricing incentives that are provided by numerous other trading venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[13] Phlx notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, Phlx must continually adjust its fees to remain competitive with other

[7] In its ''Recommendations Regarding Regulatory Responses to the Market Events of May 6, 2010'' (February 18, 2011) (available at *http://www.cftc.gov/ucm/groups/public/@aboutcftc/documents/file/jacreport_021811.pdf*), the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues recommend that the Commission ''consider encouraging, through incentives or regulation, persons who regularly implement market maker strategies to maintain best buy and sell quotations which are 'reasonably related to the market,' '' noting that such ''measures could certainly include differential pricing.'' Phlx believes that this proposed rule change expands on this recommendation by providing incentives for all member organizations, whether or not registered as market makers, to maintain buy and sell quotations at the inside market for a significant portion of the trading day.

[8] *See* NASDAQ Rule 7014(g) and BX Rule 7018(a). *See also* Securities Exchange Act Release No. 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR–ISE–2010–68); Securities Exchange Act Release No. 65076 (August 9, 2011), 76 FR 50525 (August 15, 2011) (SR–BATS–2011–024). Phlx also notes that to the extent that the proposed modification to the tier takes account of a member organization's time at the inside market, it requires the Exchange to perform calculations similar to those performed in connection with its Excess Order Fee, which weights orders differently for purposes of calculating a fee depending on the extent to which the price of an order deviates from the inside market. *See* NASDAQ OMX PHLX Pricing Schedule, Section VIII, paragraph (c). *See also* NASDAQ Rule 7018(m), BX Rule 7018(d).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] 17 CFR 242.610(c).

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37596 (June 29, 2005).

[13] 15 U.S.C. 78f(b)(8).

exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, Phlx believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, Phlx is instituting a small increase to one fee and imposing conditions upon the availability of an enhanced rebate tier. If the changes are unattractive to market participants, it is likely that PSX will fail to increase its share of executions above its current low level. Accordingly, Phlx does not believe that the changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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) of the Act [14] and paragraph (f) of Rule 19b–4 thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2013–60 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–2013–60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–60 and should be submitted on or before July 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14026 Filed 6–12–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69719; File No. SR–NASDAQ–2013–031]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval to Proposed Rule Change To Amend the Attestation Requirement of Rule 4780 To Allow a Retail Member Organization To Attest That "Substantially All" Orders Submitted to the Retail Price Improvement Program Will Qualify as "Retail Orders"

June 7, 2013.

I. Introduction

On February 19, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "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 allow Retail Member Organizations ("RMOs") to attest that "substantially all," rather than all, orders submitted to the Exchange's Retail Price Improvement Program ("Program") qualify as "Retail Orders." The proposed rule change was published for comment in the **Federal Register** on March 11, 2013.[3] The Commission received one comment on the proposal.[4] NASDAQ submitted a response to the comment letter on April 24, 2013.[5] On April 25, 2013, the Commission extended the time for Commission action on the proposed rule change until June 9, 2013.[6] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange began operating the Program after it was approved by the Commission on a pilot basis in February, 2013.[7] Under the current rules, a member organization that wishes to participate in the Program as an RMO must submit: (A) An application form; (B) supporting

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69039 (March 5, 2013), 78 FR 15392.

[4] *See* Letter to the Commission from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA), dated March 11, 2013.

[5] *See* Letter to the Commission from Jonathan F. Cayne, Associate General Counsel, NASDAQ OMX, dated April 24, 2013 ("Exchange's Response Letter").

[6] *See* Securities Exchange Act Release No. 69450, 78 FR 25501 (May 1, 2013).

[7] *See* Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2012) ("RPI Approval Order").

documentation; and (C) an attestation that ''any order'' submitted as a Retail Order[8] will qualify as such under NASDAQ Rule 4780.

The proposal seeks to lessen the attestation requirements of RMOs that submit ''Retail Orders'' eligible to receive potential price improvement through participation in the Program. Specifically, the Exchange proposes to amend NASDAQ Rule 4780 to provide that an RMO may attest that ''substantially all''—rather than all—of the orders it submits to the Program are Retail Orders as defined in Rule 4780(a)(2). NASDAQ states that the current ''any order'' attestation requirement is effectively preventing certain significant retail brokers from participating in the Program due to operational constraints.

The Exchange makes clear in its proposal that the ''substantially all'' standard is meant to allow only *de minimis* amounts of orders to participate in the Program that do not meet the definition of a Retail Order in NASDAQ Rule 4780(a)(2) and that cannot be segregated from bona fide Retail Orders due to systems limitations. Under the proposal, the Exchange would require that RMOs retain in their books and records adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are *de minimis* in terms of the overall number of Retail Orders sent to the Exchange.[9]

III. Comment Letter and the Exchange's Response

The Commission received one comment on the proposal. The comment letter expressed concern over the proposed ''substantially all'' attestation requirement primarily for four reasons.

First, the comment letter questioned whether the proposal would undermine the rationale on which the Commission approved the Retail Price Improvement Program. According to the commenter, when the Commission granted approval to the Program, along with exemptive relief in connection with the operation of the Program, it did so with the understanding that the Program would service ''only'' retail order flow. To the extent the proposal would potentially allow non-Retail Orders to receive price improvement in the Program, the commenter suggested that the Commission should reexamine its rationale for granting the exemptive relief relating to the Program.

In response, NASDAQ noted that the proposed amendment is designed to permit isolated and *de minimis* quantities of agency or riskless principal orders that do not qualify as Retail Orders to participate in the Program, because such orders cannot be segregated from Retail Orders due to systems limitations. The Exchange also noted that several significant retail brokers choose not to participate in the Program currently because of the categorical ''any order'' standard, and that the proposed ''substantially all'' standard would allow the significant amount of retail order flow represented by these brokers the opportunity to receive the benefits of the Program. Additionally, the Exchange noted that the Program is designed to replicate the existing practices of broker-dealers that internalize much of the market's retail order flow off-exchange, and that the Program, as modified by the ''substantially all'' proposal, would offer a competitive and more transparent alternative to internalization.

Second, the commenter expressed its belief that the Exchange did not sufficiently explain why retail brokers are not able to separate all Retail and non-Retail Orders and thereby satisfy the current attestation requirement. The commenter expressed its belief that the Commission should require additional explanation as to how retail brokers could satisfy the proposed ''substantially all'' standard if they could not satisfy the current standard, including an analysis of the costs and benefits to retail brokers of implementing technology changes to identify orders as Retail or non-Retail. Furthermore, the commenter suggested that the Exchange's proposal is at odds with the situation found in options markets where exchanges and brokers distinguish between public and professional customers—a distinction the commenter analogized to the Retail versus non-Retail distinction.

The Exchange responded that several retail brokers have explained that their order flow is routed in aggregate for retail execution purposes and that a *de minimis* amount of such flow may have been generated electronically, thus not meeting the strict Retail Order definition. According to NASDAQ, these retail brokers have chosen not to direct any of their significant shares of retail order flow to the Program because the cost of complying with the current ''any order'' standard, such as implementing any necessary systems changes, is too high. The Exchange represented that the retail brokers have indicated their willingness to comply with the proposed ''substantially all'' standard, as well as their ability to implement the proposed standard on their systems with confidence. The Exchange further responded that the distinction between public and professional customers in the options market is not like distinction between Retail and non-Retail Orders; the former distinction turns on volume and is thus an easier bright-line threshold to implement, while the distinction between Retail and non-Retail Orders turns on whether the order originated from a natural person, which imposes a higher threshold for order flow segmentation purposes.

Third, the commenter contended that the proposed ''substantially all'' standard is overly vague. According to the commenter, the Exchange's proposed guidance on what constitutes ''substantially all'' is so vague that it could allow a material amount of non-retail order flow to qualify for the Program. The commenter suggested that, should the Commission approve the proposal, it should first establish a bright-line rule to define what constitutes ''substantially all'' retail order flow.[10]

NASDAQ responded that the proposal represents only a modest modification of the attestation requirement. In this respect, the Exchange noted that the proposal would permit only isolated and *de minimis* quantities of agency orders to participate in the Program that do not satisfy the strict definition of a Retail Order but that cannot be segregated from Retail Orders due to systems limitations. Furthermore, the Exchange noted that an RMO's compliance with this requirement would be monitored and subject to books and record-keeping requirements.

Fourth, the commenter stated that the proposal may cause an exponential increase in monitoring and recordkeeping burdens associated with the Program. The commenter expressed its belief that it could be especially difficult for the Exchange not just to

[8] A Retail Order is defined in NASDAQ Rule 4780(a)(2) as ''an agency or riskless principal order that originates from a natural person and is submitted to NASDAQ by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price (except in the case that a market order is changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology.''

[9] NASDAQ notes that the Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will review a member organization's compliance with these requirements.

[10] The commenter cited one example where a ''de minimis'' transaction is defined in 17 CFR 242.101(b)(7), in connection with a distribution of securities, as ''less than 2%.''

identify non-retail order flow, but also to monitor whether such flow exceeded a *de minimis* amount. The commenter also questioned whether the potential difficulty of the Exchange monitoring the Program might increase the likelihood that members may be subject to unfair discrimination in the Program's approval and disqualification process.

In response, the Exchange noted that it will issue Equity Trader Alerts to provide clear guidance on how the ''substantially all'' standard will be implemented and monitored. The Exchange also noted that the Program is designed to attract as much retail order flow as possible, and that, should RMOs begin submitting substantial amounts of non-retail order flow, liquidity providers would become less willing to participate in the Program. Finally, the Exchange disagreed with the commenter's statement that a standard that provides a *de minimis* number of exceptions would be any harder to enforce that a standard that permitted no exceptions.

IV. Discussion and Commission Findings

After careful review of the proposal, the comment letter received, and the Exchange's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds that the proposed ''substantially all'' standard is a limited and sufficiently-defined modification to the Program's current RMO attestation requirements that does not constitute a significant departure from the Program as initially approved by the Commission.[13] The proposal makes clear that to comply with the standard, RMOs may submit only isolated and *de minimis* amounts of agency orders that cannot be segregated from Retail Orders due to systems limitations.[14] Furthermore, as the Exchange notes, RMOs will need to adequately document their compliance with the ''substantially all'' standard in their books and records. Specifically, an RMO would need to retain adequate documentation that substantially all orders sent to the Exchange as Retail Orders met that definition, and that those orders not meeting that definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are *de minimis* in terms of the overall number of Retail Orders sent to the Exchange. The Commission also notes that FINRA will monitor an RMO's compliance with this requirement.

Additionally, the Commission finds that the Exchange has provided adequate justification for the proposal. The Exchange represented that, as explained to it by several significant retail brokers, the current ''any order'' standard is effectively prohibitive, given the brokers' order flow aggregation and management systems. The Exchange further represented that these retail brokers indicated their systems would allow them to comply with the ''substantially all'' standard, as proposed. By allowing these retail brokers to participate in the Program, the proposal could bring the potential benefits of the Program, including price improvement and increased transparency,[15] to the retail order flow that these brokers represent.[16]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NASDAQ–2013–031) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14001 Filed 6–12–13; 8:45 am]

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[11] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] The Commission notes that it approved the Program on a pilot basis subject to ongoing Commission review. The Commission notes further that it recently approved nearly identical proposals submitted by NYSE, NYSE MKT, and BATS–Y concerning those exchanges' respective retail programs. *See* Securities Exchange Act Release Nos. 69513 (May 3, 2013), 78 FR 27261 (May 9, 2013) (NYSE and NYSE MKT), and 69643 (May 28, 2013), 78 FR 33136 (June 3, 2013) (BATS–Y).

[14] While the Commission recognizes the potential benefit of the commenter's suggestion concerning a bright-line definition of *de minimis*, *see supra* note 10, the Commission believes that, in light of the facts surrounding the instant proposal, the proposal, and the guidance that the Exchange will provide to its members on this point, is sufficiently clear. The Commission also notes that the example the commenter cites is found in Regulation M, which governs different circumstances than those at issue here.

[15] For a more detailed discussion of the Program's potential benefits, *see* RPI Approval Order, *supra* note 7.

[16] The commenter also expressed concern that this proposal may increase the Exchange's burden monitoring compliance with the Program. The Commission finds that any potential concerns raised by this assertion, which is disputed by the Exchange, are outweighed by the potential benefits of the proposal; namely, that the proposal may allow more retail orders the opportunity to participate in the Program and to receive the attendant benefits of the Program. With respect to the commenter's concern that members may be subject to unfair discrimination in the approval and disqualification process for participation in the Program, the Commission notes that it previously found that the Program's provisions concerning the certification, approval, and potential disqualification of RMOs are not inconsistent with the Act. *See* RPI Approval Order, *supra* note 7.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8353]

Spectra Energy Corp., Application for a New or Amended Presidential Permit

June 7, 2013.

AGENCY: Department of State.

ACTION: Notice of Receipt of Spectra Energy Corp., Application for a New or Amended Presidential Permit for Express Pipeline LLC to Operate and Maintain Pipeline Facilities on the Border of the United States and Canada.

SUMMARY: Notice is hereby given that the Department of State (DOS) has received from Spectra Energy Corp (''Spectra Energy'') notice that it has acquired the entities that own Express Pipeline LLC (''Express''), which operates and maintains pipeline facilities including the Express Pipeline, which is permitted under a 2004 Presidential Permit issued to Express. Spectra Energy requests a new or amended Presidential Permit be issued reflecting these corporate transactions.

Spectra Energy owns and operates a large diversified portfolio of natural gas-related energy assets in the areas of gathering and processing, transmission, and distribution. Its natural gas pipeline systems consist of over 19,000 miles of transmission pipelines.

The Express Pipeline is a 515 mile, 24 inch crude oil pipeline running between the U.S.-Canada border near Wild

Horse, Montana, to Caster, Wyoming and includes five pump stations. The Express Pipeline has been in operation since 1997 and transports crude oil from Hardisty, Alberta Canada to Casper, Wyoming.

On March 14, 2013, Spectra Energy (through its subsidiaries Spectra Energy Express (US) GP, LLC and Spectra Energy Express Holding, LLC) purchased all of the outstanding equity and debt interests in Express US Holdings LP. Immediately following these acquisitions, Spectra Energy became the 100 percent owner of the ''upstream'' entities that own Express and reorganized those entities, converting the direct parent corporation of Express into a limited liability corporation, Express Holdings (USA), LLC. Spectra plans to assign 40% of its ownership interests in Express Holdings (USA), LLC, to Spectra Energy Partners, LP, a publicly-traded master limited partnership. Spectra Energy has control over Spectra Energy Partners, LP; it indirectly owns 58% of the ownership interests in the limited partnership and also indirectly owns 100% of Spectra Energy Partners, LP's general partner, Spectra Energy Partners (DE) GP, LP.

Spectra affirms that operation and maintenance of the permitted facilities will remain substantially the same as before its acquisition of Express and acknowledges the Express is obligated to comply with the existing 2004 Permit. Spectra does not request any changes to the terms and conditions of the 2004 Permit.

Under E.O. 13337 the Secretary of State is designated and empowered to receive all applications for Presidential Permits for the construction, connection, operation, or maintenance at the borders of the United States, of facilities for the exportation or importation of liquid petroleum, petroleum products, or other non-gaseous fuels to or from a foreign country. The Department of State is circulating this application to concerned federal agencies for comment. The Department of State has the responsibility to determine whether issuance of a new or amended Presidential Permit in light of Spectra's acquisition of the entities that own Express would be in the U.S. national interest.

DATES: Interested parties are invited to submit comments within 30 days of the publication date of this notice by email to *SpectraEnergypermit@state.gov* with regard to whether issuing a new Presidential Permit reflecting the corporate succession would be in the national interest. The application is available at *http://www.state.gov/e/enr.*

FOR FURTHER INFORMATION CONTACT: Office of Energy Diplomacy, Energy Resources Bureau (ENR/EDP/EWA) Department of State 2201 C St. NW., Ste 4843 Washington, DC 20520 Attn: Michael Brennan Tel: 202–647–7553.

Dated: June 7, 2013.

Michael Brennan,

Office of Europe, Western Hemisphere and Africa, Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2013–14048 Filed 6–12–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0093]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 30, 2012, the Union Pacific Railroad Company (UP) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 219, Subpart G, Random Alcohol and Drug Testing Programs. FRA assigned the petition Docket Number FRA–2012–0093.

UP is requesting FRA's approval to periodically and intermittently adjust UP's random drug and alcohol testing rates at specific locations based on objective, performance-based criteria or, alternately, approval for a pilot program in which UP can increase random testing of its employees at specific locations based on objective, performance-based criteria.

A copy of the petition (included at the end of this notice), as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 29, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on June 10, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–14092 Filed 6–12–13; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 348X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Tipton and Howard Counties, Ind.

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 10.8-mile rail line between milepost I–41.0 (north of Market Road near Tipton) and milepost

I–51.8 (near the intersection of E. Lincoln Road and Home Avenue, in Kokomo), in Tipton and Howard Counties, Ind. The line traverses United States Postal Service Zip Codes 46068, 46072, 46901, and 46902.

NSR has certified that: (1) No local traffic has moved over the line for at least two years; (2) no overhead traffic has moved over the line for at least two years, and if there were any overhead traffic, it could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 13, 2013, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2) [1] must be filed by June 24, 2013.[2] Petitions to reopen must be filed by July 3, 2013, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

[1] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[2] Because NSR is seeking to discontinue service, not to abandon the line, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required here under 49 CFR 1105.6(c) and 49 CFR 1105.8(b), respectively.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at ''www.stb.dot.gov.''

Decided: June 7, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2013–14078 Filed 6–12–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1116

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 1116, Foreign Tax Credit.

DATES: Written comments should be received on or before August 12, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, 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 Sara Covington, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreign Tax Credit.

OMB Number: 1545–0121.

Form Number: 1116.

Abstract: Form 1116 is used by individuals (including nonresident aliens), estates, or trusts who paid foreign income taxes on U.S. taxable income, to compute the foreign tax credit. This information is used by the IRS to determine if the foreign tax credit is properly computed.

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: Individuals or households.

Estimated Number of Responses: 4,143,255.

Estimated Time per Respondent: 5 hours, 20 minutes.

Estimated Total Annual Burden Hours: 25,066,693.

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: June 3, 2013.

Allan Hopkins,

IRS Tax Analyst.

[FR Doc. 2013–14022 Filed 6–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

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 Roth IRAs.

DATES: Written comments should be received on or before August 12, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Gerald J. Shields at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 927–4374, or through the internet at *Gerald.J.Shields@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Roth IRAs.

OMB Number: 1545–1616.

Regulation Project Numbers: TD 8816.

Abstract: This collection of information contains regulations relating to Roth IRAs under section 408A of the Internal Revenue Code (Code). The regulations provide guidance on establishing Roth IRAs, contributions to Roth IRAs, converting amounts to Roth IRAs, recharacterizing IRA contributions, Roth IRA distributions and Roth IRA reporting requirements. The regulations affect individuals establishing Roth IRAs, beneficiaries under Roth IRAs, and trustees, custodians or issuers of Roth IRAs.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit and not-for-profit organizations.

Estimated Number of Respondents: 3,150,000.

Estimated Time per Respondent: 1 minute for designating an IRA as a Roth IRA. 30 minutes for recharacterizing an IRA contribution.

Estimated Total Annual Burden Hours: 125,000.

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: May 29, 2013.

Allan M. Hopkins,

Tax Analyst.

[FR Doc. 2013–14021 Filed 6–12–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0749]

Proposed Information Collection (Disability Benefits Questionnaires) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) 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, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to adjudicate a claim for disability benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 12, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0749'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's 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 or the use of other forms of information technology.

SUPPLEMENTARY INFORMATION:

Titles:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960a–1.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960b–1.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960c–1.

OMB Control Number: 2900–0749.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 21–0960a–1, 21–0960b–1, and 21–0960c–1 are used to expedite claims for the following presumptive diseases based on herbicide exposure: Hairy Cell and

Other Chronic B-cell Leukemias, Parkinson's and Ischemic Heart diseases. Veterans have the option of providing the forms to their private physician for completion and submission to VA in lieu of scheduling a VA medical examination. The data collected will be used to adjudicate Veteran's claim for disability benefits.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960a–1–13,750.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960b–1–500.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960c–1–1,250.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960a–1–55,000.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960b–1–2,000.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960c–1–5,000.

Dated: June 10, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–14019 Filed 6–12–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (*Canis lupus*) From the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (*Canis lupus baileyi*) by Listing It as Endangered; Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2013–0073; FXES11130900000C2–134–FF09E32000]

RIN 1018–AY00

Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (Canis lupus) From the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (Canis lupus baileyi) by Listing It as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTIONS: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) evaluated the classification status of gray wolves (*Canis lupus*) currently listed in the contiguous United States and Mexico under the Endangered Species Act of 1973, as amended (Act). Based on our evaluation, we propose to remove the gray wolf from the List of Endangered and Threatened Wildlife but to maintain endangered status for the Mexican wolf by listing it as a subspecies (*Canis lupus baileyi*). We propose these actions because the best available scientific and commercial information indicates that the currently listed entity is not a valid species under the Act and that the Mexican wolf (*C. l. baileyi*) is an endangered subspecies.

In addition, we recognize recent taxonomic information indicating that the gray wolf subspecies, *Canis lupus lycaon,* which occurs in southeastern Canada and historically occurred in the northeastern United States and portions of the upper Midwest (eastern and western Great Lakes regions) United States, should be recognized as a separate species, *Canis lycaon*. This proposed rule also constitutes the completion of a status review for gray wolves in the Pacific Northwest initiated on May 5, 2011.

Finally, this proposed rule replaces our May 5, 2011, proposed action to remove protections for *C. lupus* in all or portions of 29 eastern states (76 FR 26086).

DATES: *Comment submission:* We will accept comments received or postmarked on or before September 11, 2013.

Public hearings: We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by July 29, 2013.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–HQ–ES–2013–0073, which is the docket number for this rulemaking. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of *http://regulations.gov,* as it is most compatible with our comment–review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel. Submissions of electronic comments on our Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf, which also published in today's **Federal Register**, should be submitted to Docket No. FWS–R2–ES–2013–0056 using the method described above.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–ES–2013–0073; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, Virginia 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). Submissions of hard copy comments on our Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf, which also published in today's **Federal Register** should be addressed to Attn: Docket No. FWS–R2–ES–2013–0056 using the method described above.

FOR FURTHER INFORMATION CONTACT: Headquarters Office, Ecological Services; telephone (703) 358–2171. Direct all questions or requests for additional information to: GRAY WOLF QUESTIONS, U.S. Fish and Wildlife Service, Headquarters Office, Endangered Species Program, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Executive Summary

This document contains a proposed rule to remove the current listing for gray wolf, *Canis lupus,* from the List of Endangered Wildlife and Threatened (List) and add an endangered listing for the Mexican wolf, *Canis lupus baileyi*. The evaluations that are included in this proposed rule are summarized in Table 1. While later in this document we discuss our recognition of *Canis lycaon* as a separate species based on recent taxonomic information, we have not completed a status review on this species to date and, therefore, do not include it in this table.

TABLE 1—SUMMARY OF PROPOSED RULE ANALYSES AND RESULTS

Unit of assessment	Description	Valid listable entity?	Determination
Canis lupus	current listed entity—all or portions of 42 States and Mexico	no	Delist.
Canis lupus	species—rangewide	yes	Listing not warranted.
Canis lupus nubilus	subspecies—rangewide	yes	Listing not warranted.
Canis lupus occidentalis	subspecies—rangewide	yes	Listing not warranted.
Canis lupus baileyi	subspecies—rangewide	yes	List as endangered.
C. lupus in Pacific Northwest	Western Washington, Western Oregon, and Northern California	no	Not a listable entity.

Purpose of the Regulatory Action

This proposed rulemaking is intended to ensure the List of Endangered and Threatened Wildlife reflects the most current scientific and commercial information with respect to the status of *C. lupus* and any subspecies and potential distinct population segments of *C. lupus* in the contiguous United States. After a thorough evaluation of the best available science we have determined that, with the exception of Mexican wolves (from here on referred to by the scientific name, *Canis lupus*

baileyi), *C. lupus* and *C. lupus* subspecies in the contiguous United States do not warrant listing under the Act. This evaluation was based on new data that has become available since the original listing, including new information on *C. lupus* taxonomy (Chambers *et al.* 2012 and Rutledge *et al.* 2012). *Canis lupus baileyi* continues to warrant endangered status under the Act.

Major Provision of the Regulatory Action

This proposed action is authorized by the Act. We are proposing to amend § 17.11(h), subchapter B of chapter I, title 50 of the Code of Federal Regulations by removing the entries for ''Wolf, gray'' under MAMMALS in the List of Endangered and Threatened Wildlife and adding entries for ''Wolf, Mexican'' in alphabetic order.

Costs and Benefits

We have not analyzed the costs or benefits of this rulemaking action because the Act precludes consideration of such impacts on listing and delisting determinations. Instead, listing and delisting decisions are based solely on the best scientific and commercial information available regarding the status of the subject species.

Acronyms and Abbreviations Used

We use several acronyms and abbreviations throughout the preamble of this proposed rule. To assist the reader, we list them here:

Act Endangered Species Act 0f 1973, as amended
ADFG Alaska Department of Fish and Game
AGFD Arizona Game and Fish Department
APA Administrative Procedure Act
BRWRA Blue Range Wolf Recovery Area
CDV Canine distemper virus
CFR Code of Federal Regulations
CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora
COSEWIC Committee on the Status of Endangered Wildlife in Canada
CPV Canine parvovirus
DPS distinct population segment
ESA Endangered Species Act
FR Federal Register
IPCC Intergovernmental Panel on Climate Change
IUCN International Union for Conservation of Nature
LEOs Law Enforcement Officers
List Federal List of Endangered and Threatened Wildlife
MWEPA Mexican Wolf Experimental Population Area
NRM Northern Rocky Mountain
ODFW Oregon Department of Fish and Wildlife
OMB Office of Management and Budget
ORS Oregon Code of Regulations
PARC Predator and Rodent Control
RCW Revised Code of Washington
Service U.S. Fish and Wildlife Service
SNP single-nucleotide polymorphisms
SPR significant portion of its range
SSP Species Survival Plan
UBI Ungulate Biomass Index
USDA U.S. Department of Agriculture
WAC Washington Administrative Code
WDFW Washington Department of Fish and Wildlife
WGL Western Great Lakes

Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. In particular, we are seeking targeted information and comments on our proposed removal of *C. lupus* from the List of Endangered and Threatened Wildlife and addition of *C. l. baileyi* as an endangered subspecies. We also seek comment on the following categories of information.

(1) Biological, commercial trade, or other relevant information concerning our analysis of the current *C. lupus* listed entity and the adequacy of the approach taken in this analysis, with particular respect to our interpretation of the term ''population'' as it relates to the 1996 Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS policy) (61 FR 4722, February 7, 1996) and specifically to gray wolves.

(2) Information concerning the genetics and taxonomy of the eastern wolf, *Canis lycaon*.

(3) Information concerning the status of the gray wolf in the Pacific Northwest United States and the following gray wolf subspecies: *Canis lupus nubilus, Canis lupus occidentalis,* and *C. l. baileyi,* including:

(a) Genetics and taxonomy;

(b) New information concerning range, distribution, population size, and population trends;

(c) New biological or other relevant data concerning any threat (or lack thereof) to these subspecies, their habitat, or both; and

(d) New information regarding conservation measures for these populations, their habitat, or both.

As this proposal is intended to replace our May 5, 2011, proposal to remove protections for *C. lupus* in all or portions of 29 eastern contiguous states (76 FR 26086), we ask that any comments previously submitted that may be relevant to the proposal presented in this rule be resubmitted at this time.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. Comments must be submitted to *http://www.regulations.gov* before midnight (Eastern Daylight Time) on the date specified in **DATES**. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information, such as your street address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as some of the supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2013–0073, or by appointment, during normal business hours at U.S. Fish and Wildlife Service, Headquarters Office, Endangered Species Program, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203.

Public Hearings

In accordance with Section 4(b)(5) of the Act, we intend to hold public hearings on the proposal prior to the close of the public comment period. The dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, will be presented subsequently in the **Federal Register** and local newspapers at least 15 days before any such hearings.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule. The purpose of such review is to ensure that our decisions are based on scientifically sound data,

assumptions, and analyses. We will invite these peer reviewers to comment during this public comment period on our proposed actions.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of the final determination. Accordingly, the final decision may differ from this proposal.

Previous Federal Actions

Gray wolves were originally listed as subspecies or as regional populations of subspecies in the contiguous United States and Mexico. In 1967, we listed *C. l. lycaon* in the Great Lakes region (32 FR 4001, March 11, 1967), and in 1973 we listed *C. l. irremotus* in the northern Rocky Mountains (38 FR 14678, June 4, 1973). Both listings were promulgated under the Endangered Species Conservation Act of 1969; subsequently, on January 4, 1974, these subspecies were listed under the Endangered Species Act of 1973 (39 FR 1171). We listed a third gray wolf subspecies, *C. l. baileyi,* as endangered on April 28, 1976 (41 FR 17736), in the southwestern United States and Mexico. On June 14, 1976 (41 FR 24064), we listed a fourth gray wolf subspecies, *C. l. monstrabilis,* as endangered in Texas and Mexico.

In 1978, we published a rule (43 FR 9607, March 9, 1978) reclassifying the gray wolf as an endangered population at the species level (*C. lupus*) throughout the contiguous United States and Mexico, except for the Minnesota gray wolf population, which was classified as threatened. At that time, we considered the gray wolf group in Minnesota to be a listable entity under the Act, and we considered the gray wolf group in Mexico and the 48 contiguous United States other than Minnesota to be another listable entity (43 FR 9607 and 9610, respectively, March 9, 1978). The separate subspecies listings thus were subsumed into the listings for the gray wolf in Minnesota and the gray wolf in the rest of the contiguous United States and Mexico. In that 1978 rule, we also identified critical habitat in Michigan and Minnesota and promulgated special regulations under section 4(d) of the Act for operating a wolf management program in Minnesota. The special regulation was later modified (50 FR 50793, December 12, 1985).

The 1978 reclassification was undertaken to ''most conveniently'' handle a listing that needed to be revised because of changes in our understanding of gray wolf taxonomy, and in recognition of the fact that individual wolves sometimes cross subspecific boundaries. In addition, we sought to clarify that the gray wolf was only listed south of the Canadian border. However, the 1978 rule also stipulated that ''biological subspecies would continue to be maintained and dealt with as separate entities'' (43 FR 9609), and offered ''the firmest assurance that [the Service] will continue to recognize valid biological subspecies for purposes of its research and conservation programs'' (43 FR 9610, March 9, 1978). Accordingly, we implemented three gray wolf recovery programs in the following regions of the country: the Western Great Lakes (Minnesota, Michigan, and Wisconsin, administered by the Service's Great Lakes, Big Rivers Region), the Northern Rocky Mountains (Idaho, Montana, and Wyoming, administered by the Service's Mountain–Prairie Region and Pacific Region), and the Southwest (Arizona, New Mexico, Texas, Oklahoma, Mexico, administered by the Service's Southwest Region). Recovery plans were developed in each of these areas (the northern Rocky Mountains in 1980, revised in 1987; the Great Lakes in 1978, revised in 1992; and the Southwest in 1982, the revision of which is now underway) to establish and prioritize recovery criteria and actions appropriate to the unique local circumstances of the gray wolf. A separate recovery effort for gray wolves formerly listed as *C. l. monstrabilis* was not undertaken because this subspecies was subsumed with *C. l. baileyi* and thus addressed as part of the recovery plan for the Southwest.

Between 2003 and 2009 we published several rules revising the 1978 contiguous United States and Mexico listing for *C. lupus* in an attempt to recognize the biological recovery of gray wolves in the northern Rocky Mountain and western Great Lakes populations but leave the gray wolf in the southwestern United States and Mexico listed as endangered (except for the nonessential experimental population in Arizona and New Mexico) (68 FR 15804, April 1, 2003; 72 FR 6052, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15070 and 74 FR 15123, April 2, 2009). However, each of these revisions was challenged in court. As a result of court orders (*Defenders of Wildlife, et al.* v. *Norton, et al.,* 354 F.Supp.2d 1156 (D. Or. 2005); *National Wildlife Federation, et al.* v. *Norton, et al.,* 386 F.Supp.2d 553 (D. Vt. 2005); *Defenders of Wildlife, et al.* v. *Hall, et al.,* 565 F.Supp.2d 1160 (D. Mont. 2008); *Defenders of Wildlife, et al.* v. *Salazar, et al.,* 729 F.Supp.2d 1207 (D. Mont. 2010); *Humane Society of the United States* v. *Kempthorne,* 579 F. Supp. 2d 7 (D.D.C. 2008)) and, in one case, a settlement agreement (*Humane Society of the United States* v. *Salazar,* 1:09–CV–1092–PLF (D.D.C.)), by the spring of 2010 the listing for *C. lupus* in 50 CFR 17.11 remained unchanged from the reclassification that occurred in 1978 except for the addition of the three experimental populations (Yellowstone Experimental Population Area (59 FR 60252, November 22, 1994; 70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008), Central Idaho Experimental Population Area (59 FR 60266, November 22, 1994; 70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008), and the Mexican Wolf Experimental Population Area (63 FR 1752, January 12, 1998)). For additional information on these Federal actions and their associated litigation history refer to the relevant associated rules (68 FR 15804, April 1, 2003; 72 FR 6052, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15070; and 74 FR 15123, April 2, 2009) or the Previous Federal Actions sections of our recent gray wolf actions (76 FR 61782, October 5, 2011; 76 FR 81666, December 28, 2011; 77 FR 55530, September 10, 2012).

In the northern Rocky Mountains, on May 5, 2011, we published a final rule that implemented Section 1713 of Public Law 112–10, reinstating our April 2, 2009, delisting rule which identified the Northern Rocky Mountain (NRM) population of gray wolf as a distinct population segment (DPS) and, with the exception of Wyoming, removed gray wolves in the DPS from the List (76 FR 25590). Although gray wolves in Wyoming were not included in the May 5, 2011, final delisting, we have since finalized the removal of gray wolves in Wyoming from the List (77 FR 55530, September 10, 2012).

In the western Great Lakes, on May 5, 2011, we also published a proposed rule to revise the List for *C. lupus* in the eastern United States (76 FR 26086). This proposal included (1) revising the 1978 listing of the Minnesota population of gray wolves, identifying it as the Western Great Lakes (WGL) DPS (the DPS includes all of Minnesota, Wisconsin, and Michigan and portions of the adjacent states), and removing that WGL DPS from the List, and (2) revising the range of the gray wolf (the species *C. lupus*) by removing all or parts of 29 eastern states that we recognized were not part of the historical range of the gray wolf.

On December 28, 2011, we published a final rule that revised the listing of the Minnesota population of gray wolves, identified it as part of the WGL DPS, and removed the DPS from the List (76 FR 81666). We also notified the public that we had separated our determination on the delisting of the WGL DPS from

the determination on our proposal regarding all or portions of the 29 eastern states we considered to be outside the historical range of the gray wolf and stated that a subsequent decision would be made for the rest of the eastern United States.

In the southwest, on August 11, 2009, we received a petition from the Center for Biological Diversity requesting that we list the Mexican wolf as an endangered subspecies or DPS and designate critical habitat under the Act. On August 12, 2009, we received a petition dated August 10, 2009, from WildEarth Guardians and The Rewilding Institute requesting that we list the Mexican wolf as an endangered subspecies and designate critical habitat under the Act. On October 9, 2012, we published a 12-month finding in the **Federal Register** stating that, because all individuals that constitute the petitioned entity already receive the protections of the Act, the petitioned action was not warranted at that time (77 FR 61375).

As a result of the actions described above, the current *C. lupus* listed entity now includes all or portions of 42 states (Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Missouri, Mississippi, North Carolina, Nebraska, New Hampshire, New Jersey, Nevada, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Vermont, and West Virginia; those portions of Arizona, New Mexico, and Texas not included in the experimental population, and portions of Iowa, Indiana, Illinois, North Dakota, Ohio, Oregon, South Dakota, Utah, and Washington), and Mexico (Figure 1).

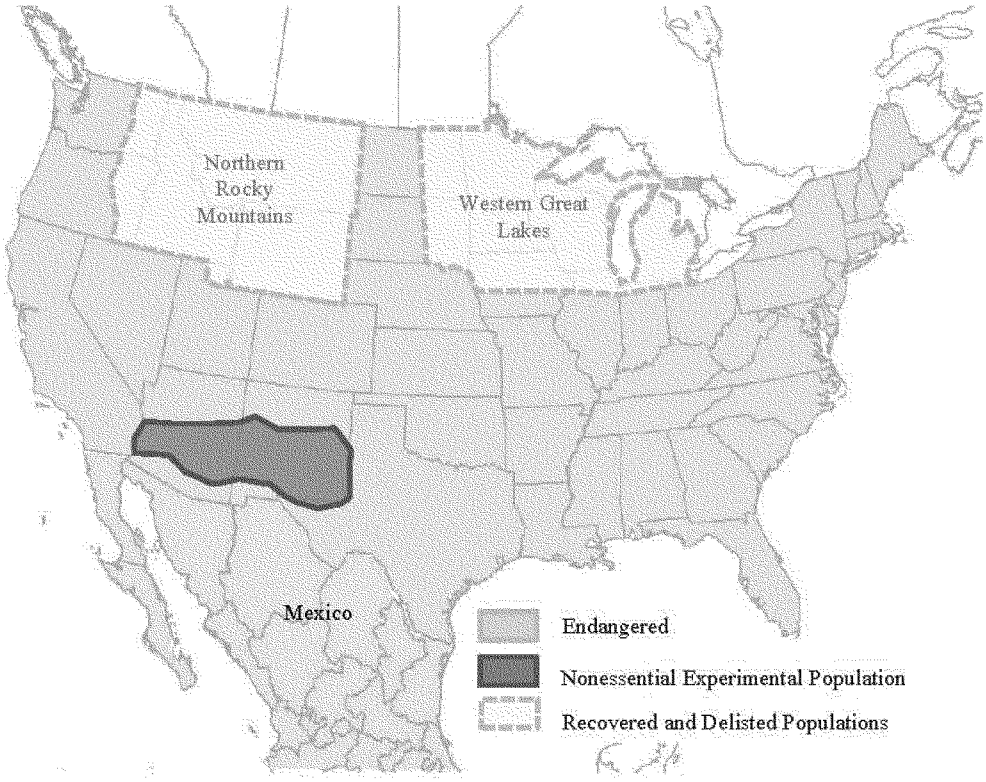


Figure 1: Current legal status of *C. lupus* under the Act. All map lines are approximations see 50 CFR 17.11 and 17.84(k) for exact boundaries.

On February 29, 2012, we concluded a 5-year review of the *C. lupus* listed entity, recommending that the entity currently described on the List should be revised to reflect the distribution and status of *C. lupus* populations in the contiguous United States and Mexico by removing all areas currently included in the Code of Federal Regulations (CFR) range except where there is a valid species, subspecies, or DPS that is threatened or endangered.

National Wolf Strategy

We first described our national wolf strategy in our May 5, 2011, proposed rule to revise the List for the gray wolf in the eastern United States (76 FR 26086). This strategy was intended to: (1) Lay out a cohesive and coherent approach to addressing wolf conservation needs, including protection and management, in accordance with the Act's statutory framework; (2) ensure that actions taken for one wolf population do not cause unintended consequences for other populations; and (3) be explicit about the role of historical range in the conservation of extant wolf populations.

The strategy is based on three precepts. First, to qualify for listing, wolf entities must conform to the Act's definition of ''species,'' whether as taxonomic species or subspecies or as DPSs. Second, the strategy promotes the continued representation of all substantially unique genetic lineages of gray wolves found historically in the

contiguous United States. Third, wolf conservation under the Act is concerned with reducing extinction risk to imperiled species, subspecies, or valid DPSs. The May 5, 2011, proposed rule further stated that our strategy focused on conservation of four extant gray wolf populations: (1) The WGL population, (2) the NRM population, (3) the southwestern population of Mexican wolves, and (4) a potential population of gray wolves in the Pacific Northwest.

All of our actions to date are consistent with this focus. As stated above (see Previous Federal Actions), we published final rules delisting the NRM DPS, except for Wyoming, on May 5, 2011 (76 FR 25590), and the WGL DPS on December 28, 2011 (76 FR 81666). On September 10, 2012, we published a final rule delisting the Wyoming portion of the NRM DPS (77 FR 55530).

We have completed our evaluation of the status of gray wolves currently occupying portions of the Pacific Northwest, and our assessment to determine if they qualify for Listing under the Act is presented in this proposed rule. The status of the southwestern population (*i.e., C. l. baileyi*) was reviewed pursuant to our 90-day finding on two listing petitions (75 FR 46894, August 4, 2010). We published a not warranted 12-month finding on October 9, 2012 (77 FR 61375). However, in that finding we stated that we could not, consistent with the requirements of the Act, take any action that would remove the protections accruing to the southwestern population under the existing *C. lupus* listing without first determining whether the southwestern population warranted listing separately as a subspecies or a DPS, and, if so, putting a separate listing in place (77 FR 61377, October 9, 2012). Therefore, because we are now proposing to remove protections for the current *C. lupus* listed entity, we must reconsider listing the southwestern population as a subspecies or DPS, and we present our analysis and determination regarding that matter in this proposed rule.

Our national wolf strategy also addresses the two other wolf taxa that fall within the range described for *C. lupus* in the 1978 reclassification, the eastern wolf (*C. lycaon*) and the red wolf (*Canis rufus*). Consistent with our current understanding of *C. lycaon* taxonomy and the historical range of *C. lupus,* our proposal to remove the current *C. lupus* entity from the List addresses the error of continuing to include all or parts of 29 eastern states in the current *C. lupus* listing. For a complete discussion of this issue, see Taxonomy section below. With respect to the status of *C. lycaon,* our analysis is ongoing (see *C. lycaon* section below). With regard to *C. rufus,* red wolves currently are listed as endangered where found (32 FR 4001, March 11, 1967); the red wolf listing is not affected by this proposal, and recovery efforts for red wolves will continue (Red Wolf Recovery and Species Survival Plan; Service 1990).

Approach for This Proposed Rule

In this proposed rule we consider whether and to what extent gray wolves should be listed in the contiguous United States and Mexico. Our analysis begins with an evaluation of the current *C. lupus* listed entity (Figure 1), with a focus on current taxonomic information and statutory and policy requirements under the Act. Consistent with our 5-year review, we conclude that the current *C. lupus* listed entity is not a valid species under the Act and now propose to remove this entity from the List (see Evaluation of the Current *C. lupus* Listed Entity). However, our 5-year review further recommends that we consider whether there are any valid species, subspecies, or DPSs of gray wolf that are threatened or endangered in the contiguous United States and Mexico. Thus, in this rule we consider whether the current *C. lupus* listed entity is part of a valid species or includes any valid subspecies, or DPSs of gray wolf that warrant protections under the Act. Because we are considering whether protections need to remain in place for any of the gray wolves that are included in the current *C. lupus* listed entity, we are focusing our evaluation on valid listable entities (*i.e., C. lupus* and subspecies and potential DPSs of *C. lupus*) with ranges that are at least partially within the contiguous United States or Mexico. In this rule we also consider recent scientific information with respect to eastern wolf taxonomy. See Taxonomy section for detailed discussions of the subspecies we evaluate and the Service's position on eastern wolf taxonomy.

Species Information

Biology and Ecology

The biology and ecology of the gray wolf has been widely described in the scientific literature (*e.g.,* Mech 1970, Mech and Boitani 2003), in Service recovery plans (*e.g.,* Northern Rocky Mountain Recovery Plan (Service 1987) and Recovery Plan for the Eastern Timber Wolf (Service 1992)), and in previous proposed and final rules (*e.g.,* 68 FR 15804, April 1, 2003; 71 FR 15266, March 27, 2006; 74 FR 15123, April 2, 2009; 75 FR 46894, August 4, 2010; and 76 FR 81666, December 28, 2011). Gray wolves are the largest wild members of the Canidae, or dog family, with adults ranging from 18 to 80 kilograms (kg) (40 to 175 pounds (lb)), depending on sex and geographic locale (Mech 1974, p. 1). Gray wolves have a circumpolar range including North America, Europe, and Asia. A recent genetic study found that gray wolves also occur in portions of North Africa (Rueness *et al.* 2011, pp. 1–5; Gaubert *et al.* 2012, pp. 3–7). In North America, wolves are primarily predators of medium and large mammals, such as moose (*Alces alces*), elk (*Cervus elaphus*), white-tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), caribou (*Rangifer tarandus*), muskox (*Ovibos moschatus*), bison (*Bison bison*), and beaver (*Castor canadensis*). Gray wolves have long legs that are well adapted to running, allowing them to move fast and travel far in search of food (Mech 1970, p. 13), and large skulls and jaws, well suited to catching and feeding on large mammals (Mech 1970, p. 14). Wolves also have keen senses of smell, hearing, and vision, which they use to detect prey and one another (Mech 1970, p. 15). Pelt color varies in wolves more than in almost any other species, from white, to grizzled gray, brown, to coal black (Mech 1970, p. 16).

Wolves share an evolutionary history with other mammalian carnivores (Order Carnivora), or meat eaters, which are distinguished by their long, pointed canine teeth, sharp sheering fourth upper premolars and first lower molars, simple digestive system, sharp claws, and highly developed brains (Mech 1970, pp. 20–21). Divergence among the ancestral mammalian carnivores began 40 to 50 million years ago (Mech 1970, p. 21), and at some point during the late Miocene Epoch (between 4.5 to 9 million years ago) the first species of the genus *Canis* arose, the forerunner of all modern wolves, coyotes (*Canis latrans*), and domestic dogs (*Canis familiaris*) (Nowak 2003, p. 241). The lineage of wolves and coyotes diverged between 1.8 to 2.5 million years ago (Nowak 2003, p. 241). Domestication of wolves led to all modern domestic dog breeds and probably started somewhere between 135,000 to 13,000 years ago (reviewed by Honeycutt 2010, p. 3).

Gray wolves are highly territorial, social animals and group hunters, normally living in packs of 7 or less, but sometimes attaining pack sizes of 20 or more wolves (Mech 1970, pp. 38–40; Mech and Boitani 2003, pp. 8, 19). Packs are family groups consisting of a

breeding pair, their pups from the current year, offspring from the previous year, and occasionally an unrelated wolf (Mech 1970, p. 45; Mech and Boitani 2003, p. 2). Normally, only the top-ranking male and female in each pack breed and produce pups, although sometimes maturing wolves within a pack will also breed with members of the pack or through liaisons with members of other packs (Mech and Boitani 2003, p. 3). Females and males typically begin breeding as 2-year-olds and may produce young annually until they are over 10 years old. Litters are born from early April into May and can range from 1 to 11 pups, but generally include 5 to 6 pups (Mech 1970, p. 119; Fuller *et al.* 2003, p. 176). Normally a pack has a single litter annually, but 2 litters from different females in a single pack have been reported, and in one instance 3 litters in a single pack were documented (reviewed by Fuller *et al.* 2003, p. 175). Offspring usually remain with their parents for 10–54 months before dispersing, meaning that packs may include the offspring from up to 4 breeding seasons (reviewed by Mech and Boitani 2003, p. 2).

Packs typically occupy and defend a territory of 33 to more than 2,600 square kilometers (sq km) (13 to more than 1,016 square miles (sq mi)), with territories tending to be smaller at lower latitudes (Mech and Boitani 2003, pp. 21–22; Fuller *et al.* 2003, pp. 172–175). The large variability in territory size is likely due to differences in pack size; prey size, distribution, and availability; population lags in response to changes in prey abundance; and variation in prey vulnerability (*e.g.,* seasonal age structure in ungulates) (Mech and Boitani 2003, pp. 21–22).

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. Wolf populations have been shown to increase rapidly if the source of mortality is reduced after severe declines (Fuller *et al.* 2003, pp. 181–183; Service *et al.* 2012, Table 4).

A wolf pack will generally maintain its territory as long as the breeding pair is not killed, and even if one member of the breeding pair is killed, the pack may hold its territory until a new mate arrives (Mech and Boitani 2003, pp. 28–29). If both members of the breeding pair are killed, the remaining members of the pack may disperse, starve, or remain in the territory until an unrelated dispersing wolf arrives and mates with one of the remaining pack members (Brainerd *et al.* 2008, pp. 93–94, Mech and Boitani 2003, pp. 28–29).

Yearling wolves frequently disperse, although some remain with their natal pack (Mech and Boitani 2003, pp. 11–17). Dispersers may become nomadic and cover large areas as lone animals, or they may locate suitable unoccupied habitats and members of the opposite sex to establish their own territorial pack (Mech and Boitani 2003, pp. 11–17). Dispersal distances in North America typically range from 65 to 154 km (40 to 96 miles) (Boyd and Pletscher 1999, p. 1102), although dispersal distances of several hundred kilometers are occasionally reported (Boyd and Pletscher 1999, pp. 1094, 1100; Mech and Boitani 2003, pp. 14–15, Oregon Department of Fish and Wildlife (ODFW) 2011, p. 55). These dispersal movements allow a wolf population to quickly expand and colonize areas of suitable habitat that are nearby or even those that are separated by a broad area of unsuitable habitat.

Wolf populations are remarkably resilient as long as food supply (a function of both prey density and prey vulnerability), habitat, and regulation of human-caused mortality (Fuller *et al.* 2003, pp. 187–189; Creel and Rotella 2010, pp. 4–6) are adequate. In naturally occurring populations (in the absence of hunting), wolves are likely limited by a density-dependent, intrinsic regulatory mechanism (*e.g.,* social strife, territoriality, disease) when ungulate densities are high, and are limited by prey availability when ungulate densities are low (Carriappa *et al.* 2011, p. 729). Where harvest occurs, high levels of reproduction and immigration can compensate for mortality rates of 17 to 48 percent ([Fuller *et al.* 2003 +/– 8 percent], pp. 184–185; Adams *et al.* 2008 [29 percent], p. 22; Creel and Rotella 2010 [22 percent], p. 5; Sparkman *et al.* 2011 [25 percent], p. 5; Gude *et al.* 2011 [48 percent], pp. 113–116; Vucetich and Carroll In Review [17 percent]). Recent studies suggest the sustainable mortality rate may be lower, and that harvest may have a partially additive or even super additive effect (i.e., harvest increases total mortality beyond the effect of direct killing itself, through social disruption or the loss of dependent offspring) on wolf mortality (Murray *et al.* 2010, p. 2514; Creel and Rotella 2010, p. 6), but there is substantial debate on this issue (Gude *et al.* 2012, pp. 113–116). 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).

Taxonomy

The taxonomy of the genus *Canis* has a complex and contentious history (for an overview of the taxonomic history of the genus *Canis* in North America, see Chambers *et al.* 2012, pp. 16–22). The literature contains at least 31 published names for species or subspecies in the genus (Hall and Kelson 1959, p. 849; Chambers *et al.* 2012, Table 1). Hall (1981) and Nowak (1995), who conducted the most recent comprehensive reviews based on morphology, both recognize two species of wolves, *C. lupus* and *C. rufus.* Hall (1981), however, recognized 27 subspecies (24 in North America) of *C. lupus* while Nowak (1995) recognized 14 subspecies (5 in North America) of *C. lupus.*

More recently, the advance in molecular genetic capabilities has led to even greater controversy regarding interpretations of wolf taxonomy (Chambers *et al.* 2012, pp. 4–5). Chambers *et al.* (2012) reviewed the available scientific literature to assess the taxonomic classification of wolves in North America. They believe the current literature supports recognition of three subspecies of gray wolf in North America (*C. l. nubilus, C. l. occidentalis,* and *C. l. baileyi*) and is not definitive with regard to a potential fourth subspecies (*Canis lupus arctos*) of gray wolf in North America. Researchers continue to debate such questions as to the identity of the wolves in the Great Lakes (Wilson *et al.* 2000, Leonard and Wayne 2008, Koblmüller *et al.* 2009), the northern extent of *C. l. baileyi* historical (pre-1900s) range (Leonard *et al.* 2005), whether wolves in the western United States are truly differentiated (for example, vonHoldt *et al.* 2011 show little genetic separation between the purported *C. l. occidentalis* and *C. l. nubilus*), and the taxonomy of wolves in the Pacific coastal region (Munoz-Fuentes *et al.* 2009, Weckworth *et al.* 2011, pp. 5–6).

The lack of consensus among researchers on these issues prompted Chambers *et al.* (2012, entire) to conduct an evaluation and synthesis of the available scientific literature related to the taxonomy of North American wolves to date. This is the only peer-reviewed synthesis of its kind conducted for North American wolves and summarizes and synthesizes the best available scientific information on the issue. Chambers *et al.* (2012, entire)

employed the general concordance approach of Avise (2004, entire) to recognize subspecies. The nature of available data does not permit the application of many traditional subspecies criteria (*i.e.,* 75-percent rule, Mayr 1963, p. 348; 1969, p. 190; 90 percent separation rule, Patten and Unitt, 2002, p. 27; reciprocal monophyly, Zink 2004, entire). The Avise (2004, entire) method is the most applicable to the disparate data sets available on wolves, and evaluates concordance in patterns from measures of divergence from morphology and various genetic marker systems.

While many experts reject the recognition of subspecies due to the often arbitrary nature of the division of intraspecific variation along lines across which entities may freely move and interbreed, the Act is explicit that threatened or endangered subspecies are to be protected. Given the available data, we accept the conclusions of Chambers *et al.* (2012) regarding taxonomic subdivisions, including species and subspecies, of North American wolves and approximate historical ranges, and use them to inform this rule. This is consistent with Service regulations that require us to rely on standard taxonomic distinctions and the biological expertise of the Department of the Interior and the scientific community concerning the relevant taxonomic group (50 CFR 424.11). Even recognizing continued uncertainty on a number of specific issues (*e.g.,* the issues of continued debate noted above), we believe Chambers *et al.* (2012) is reflective of this standard. However, it should be noted that, while we accept the conclusions of Chambers *et al.* (2012) for use in this analysis, *Canis* taxonomy has long been complicated and continuously evolves with new data. Therefore, we do not view this issue as ''resolved,'' and we fully expect that *Canis* taxonomy will continue to be debated for years if not decades to come, and scientific opinion on what represents the current best available science could well shift over time.

Wolf Species of the Contiguous United States and Mexico

Our review of the best available taxonomic information indicates that *C. lupus* did not historically occupy large portions of the eastern United States: That is, the northeastern United States and portions of the upper Midwest (eastern and western Great Lakes regions) were occupied by the eastern wolf (*C. lycaon*), now considered a separate species of *Canis* rather than a subspecies of *C. lupus,* and the southeastern United States was occupied by the red wolf *(C. rufus)* rather than the gray wolf.

At the time the gray wolf was listed in 1978, and until the molecular genetics studies of the last few years, the range of the gray wolf prior to European settlement was generally believed to include most of North America. The only areas believed to have lacked gray wolf populations were the coastal and interior portions of California, the arid deserts and mountaintops of the western United States, and parts of the eastern and southeastern United States (Young and Goldman 1944, Hall 1981, Mech 1974, and Nowak 1995). However, some authorities have questioned the reported historical absence of gray wolves in parts of California (Carbyn *in litt.* 2000, Mech *in litt.* 2000).

Furthermore, we note long-held differences of opinion regarding the extent of the gray wolf's historical range in the eastern and southeastern United States. Some researchers regarded Georgia's southeastern corner as the southern extent of gray wolf range (Young and Goldman 1944, Mech 1974); others believed gray wolves did not extend into the Southeast at all (Hall 1981) or did so to a limited extent, primarily at somewhat higher elevations (Nowak 1995). The southeastern and mid-Atlantic states were generally recognized as being within the historical range of the red wolf *(C. rufus),* and it is not known how much range overlap historically occurred between these two *Canis* species. Morphological work by Nowak (2000, 2002, 2003) supported extending the historical range of the red wolf into southern New England or even farther northward, indicating either that the historical range of the gray wolf in the eastern United States was more limited than previously believed, or that the respective ranges of several wolf species expanded and contracted in the eastern and northeastern United States, intermingling in postglacial times along contact zones.

The results of recent molecular genetic analyses (*e.g.,* Wilson *et al.* 2000, Wilson *et al.* 2003, Wheeldon and White 2009, Wilson *et al.* 2009, Fain *et al.* 2010, Wheeldon *et al.* 2010, Rutledge *et al.* 2012) and morphometric studies (*e.g.,* Nowak 1995, 2000, 2002, 2003) explain some of the past difficulties in describing the gray wolf's range in the eastern United States. These studies show that the mid-Atlantic and southeastern states historically were occupied by the red wolf *(C. rufus)* and that the Northeast and portions of the upper Midwest (eastern and western Great Lakes regions) historically were occupied by *C. lycaon;* they also indicate that the gray wolf *(C. lupus)* did not occur in the eastern United States.

Based on these recent studies, we view the historical range of the gray wolf in the contiguous United States as the central and western United States, including portions of the western Great Lakes region, the Great Plains, portions of the Rocky Mountains, the Intermountain West, the Pacific states, and portions of the Southwest.

In sum, we now recognize three wolf species with ranges in the contiguous United States: *C. lupus, C. lycaon,* and *C. rufus.*

Gray Wolf Subspecies of the Contiguous United States and Mexico

Within *C. lupus,* individuals are generally similar with some small differences in the details of morphology, average body mass, and genetic lineage, as might be expected in a widespread species with geographic barriers that restrict or temporarily inhibit gene flow (Nowak 2003, p. 244). A number of taxonomists have attempted to describe and organize this variation by designating subspecies of gray wolf (reviewed by Nowak 2003, pp. 244–245). As stated above, gray wolf taxonomy at the subspecific level has long been debated with evolving views on the validity of various subspecies. Generally, the trend in gray wolf taxonomy has been toward subsuming subspecies, resulting in fewer recognized subspecies over time (Young and Goldman 1944, pp. 413–415; Hall 1981, p. 76; Mech 1974, p. 1–6; Nowak 1995, pp. 375–397, Figure 20; vonHoldt *et al.* 2011, pp. 7–10; Chambers *et al.* 2012, Figures 1–3). Because of questions about the validity of some of the originally listed subspecies, the 1978 final rule (43 FR 9607; March 9, 1978) reclassified all gray wolves in the contiguous United States and Mexico, except for those in Minnesota, into a single listed entity. However, the 1978 rule also stipulated that ''biological subspecies would continue to be maintained and dealt with as separate entities'' (43 FR 9609), and offered ''the firmest assurance that [the Service] will continue to recognize valid biological subspecies for purposes of its research and conservation programs'' (43 FR 9610, March 9, 1978).

Due to the complicated taxonomy of the genus *Canis* and the fact that some subspecies of gray wolves are more strongly supported in the scientific literature than others, it is important to be explicit about what taxonomic entities we are considering in this evaluation. As stated above, for the purposes of this rulemaking, we are considering the conservation status of

the gray wolf, *C. lupus,* and those purported subspecies with described historical ranges at least partially within the contiguous United States. We are taking this approach in an effort to thoroughly consider what *C. lupus* listing(s) that include gray wolves in portions of the contiguous United States and Mexico, if any, would be appropriate if the existing listing were removed. In this rule we follow Chambers' *et al.* (2012) interpretation of available scientific literature, and are thus considering the following three subspecies, with the following approximate historical ranges, in our analysis: (1) *C. lupus baileyi,* which occupies the southwestern United States and Mexico; (2) *C. lupus occidentalis,* which occurs throughout west-central Canada, Alaska (except coastal southeast Alaska), and the NRM region; and (3) *C. lupus nubilus,* which occurs throughout central Canada and into northern Ontario and Quebec, in the Pacific Northwest (including coastal British Columbia, and southeast Alaska), and in the WGL region and historically occurred in the Great Plains states of the United States.

The taxonomic synthesis by Chambers *et al.* (2012, p. 42) includes a general evolutionary interpretation of the conclusions of their review in the context of the evolutionary history of modern North American *Canis.* This evolutionary scenario describes at least three separate invasions of North America by *C. lupus* from Eurasia to account for the patterns of genetic variation seen in extant North American wolves. The first of these North American invasions was by the ancestors of *C. l. baileyi,* followed by the ancestors of *C. l. nubilus,* which displaced *C. l. baileyi* in the northern part of its range. The final invasion was by *C. l. occidentalis,* which displaced *C. l. nubilus* in the northern part of its former range. Delineation of the extent of the historical range of these subspecies is difficult given the existence of zones of reproductive interaction, or intergradation, between neighboring gray wolf populations.

Zones of intergradation have long been a recognized characteristic of historical gray wolf distribution throughout their circumpolar distribution (Mech 1970, p. 223; Brewster and Fritts 1995, p. 372). As Chambers *et al.* (2012, p. 43) describe, ''delineation of exact geographic boundaries presents challenges. Rather than sharp lines separating taxa, boundaries should generally be thought of as intergrade zones of variable width. These 'fuzzy' boundaries are a consequence of lineages of wolves that evolved elsewhere coming into contact. Historical or modern boundaries should also not be viewed as static or frozen in any particular time. The hypothesized three wolf invasions that resulted in the current subspecific structure would have resulted in considerable movement of subspecies boundaries as newer invaders coopted territory once held by earlier invaders. We have no reason to believe that this process of geographic replacement had reached its conclusion prior to European contact, rather this process likely continued into the historic period. Our understanding of the historical interactions between subspecies or genetically different populations (e.g., Leonard *et al.* 2005) is that they are dynamic processes and boundaries are in constant (and continuing) flux.''

We include details on the specific taxonomy of the three subspecies in our evaluations below.

Canis lupus nubilus

Say (1823) first defined *C. l. nubilus* based on wolves he observed in the central United States. Goldman's (1944) classification included a range map of 24 subspecies in North America, and described the distribution *of C. l. nubilus* as formerly Great Plains region from south-central Canada south to south-central United States. Earlier taxonomies had *C. l. nubilus* intergrading on the north with *occidentalis,* on the west with *irremotus* and *youngi,* on the east with *lycaon,* and on the south with *monstrabilis* (Goldman 1944, p. 442).

Goldman (1944, p. 414) recognized 23 subspecies of gray wolves in North America, with *C. l. fuscus,* or the Cascades Mountains wolf, occupying the Pacific Northwest. His recognition of *C. l. fuscus* was based on the examination of 28 specimens (skulls and skins) from the west coast of Canada south through the Pacific Northwest (Young and Goldman 1944, p. 458). Nowak later revised the subspecific classification of North American wolves based on examination of 580 wolf skulls (10 from the Pacific Northwest) and a multivariate statistical analysis of 10 skull measurements, to include only 5 subspecies, lumping the Pacific Northwest wolves with those from the west coast of Canada and southeast Alaska, most of the Rocky Mountains, the Great Plains within the United States, and northeastern Canada and describing them as the plains wolf (*C. l. nubilus*) (Nowak 1995, p. 396; Nowak 2003, Table 9.3).

The approximate historical range of *C. l. nubilus* borders each of the other *C. lupus* subspecies' ranges, with *C. lycaon,* and probably that of *C. rufus,* creating ambiguous zones of admixture (Chambers *et al.* 2012, pp. 39–42). Recent molecular ecology studies of wolves in North America have reported differentiation between coastal and inland wolves in western Canada based on microsatellite DNA (Weckworth *et al.* 2005, p. 921), mitochondrial DNA (Leonard *et al.* 2005, pp. 13–15; Muñoz-Fuentes *et al.* 2009, p. 5; Weckworth *et al.* 2010, p. 921), and single-nucleotide polymorphisms (SNPs) (von Holdt *et al.* 2011, p. 4). These coastal-inland patterns of divergence support Nowak's (1995, Fig 20) boundary between *C. l. nubilus* and *C. l. occidentalis* in the Pacific Northwest. Although Leonard *et al.* (2005, pp. 13–15) asserted that coastal wolves were evolutionarily distinct from *C. l. nubilus,* the large proportion of unique, and apparently extinct, haplotypes in their historical sample likely exaggerated the measure of divergence between the coastal populations and historical inland *C. l. nubilus* (Chambers *et al.* 2012, pp. 41–42). Chambers *et al.* (2012, pp. 41–42) reevaluated the haplotypes in Leonard *et al.* (2005) and Weckworth *et al.* (2010) and found that the most common haplotype in west-coastal Canada also occured in the central Great Plains of the United States, and nearly all coastal haplotypes are in the same phylogroup as the historical western *C. l. nubilus* haplotypes (Weckworth *et al.* 2010, p. 368). These relationships are consistent with west-coastal Canada and southeast Alaska wolves (and probably coastal wolves in the Pacific Northwest) being a northward extension of *C. l. nubilus.* Genetic study of wolf skins and bones collected from the historical wolf population in the Pacific Northwest has not yet been accomplished, but would be valuable in further evaluating the historical taxonomic placement of gray wolves from that region.

Canis lupus occidentalis

Richardson (1829) described *C. l. occidentalis* based on type material from the Northwest Territories. Goldman (1944) described the distribution of *C. l. occidentalis* generally as interior western Canada including the Rocky Mountains.

Since publication of Goldman (1944), revisions of wolf taxonomy have tended toward recognition of fewer subspecies. Nowak's (1995) delineation of subspecies and depiction of approximate historical ranges indicate that, under his taxonomy, *C. l. occidentalis* ranged across Alaska except for the coastal Southeast, and from the Beaufort Sea in the north to the Rocky Mountains of the contiguous

United States in the south and including much of the interior western Canada (Nowak 1995, Fig. 20). Under Nowak's classification, *C. l. occidentalis* subsumes the following formerly recognized subspecies entirely or in part: *Pambasileus, tundrarum, alces, mackenzii, columbianus, irremotus,* and *griseoalbus.*

Canis lupus baileyi

Researchers have hypothesized that North America was colonized by gray wolves from Eurasia during the Pleistocene through at least three waves of colonization, each by wolves from different lineages; *C. l. baileyi* may represent the last surviving remnant of the initial wave of gray wolf migration into North America (Nowak 1995, p. 396; Nowak 2003, p. 242; Wayne and Vilá 2003, pp. 226–228; Chambers *et al.* 2012, p. 10). The distinctiveness of *C. l. baileyi* and its recognition as a subspecies is supported by both morphometric and genetic evidence. We are unaware of any published study that does not support the recognition of *C. l. baileyi* as a valid subspecies.

This subspecies was originally described by Nelson and Goldman in 1929 as *Canis nubilus baileyi,* with a distribution of ''Southern and western Arizona, southern New Mexico, and the Sierra Madre and adjoining tableland of Mexico as far south, at least, as southern Durango (Nelson and Goldman 1929, pp. 165–166).'' Goldman (1944, pp. 389–636) provided the first comprehensive treatment of North American wolves, in which he renamed *C. n. baileyi* as a subspecies of *lupus* (*i.e., C. l. baileyi*) and shifted the subspecies' range farther south in Arizona. His gray wolf classification scheme was subsequently followed by Hall and Kelson (1959, pp. 847–851; Hall 1981, p. 932). Since that time, gray wolf taxonomy has undergone substantial revision, including a major taxonomic revision in which the number of recognized gray wolf subspecies in North America was reduced from 24 to 5, with *C. l. baileyi* being recognized as a subspecies ranging throughout most of Mexico to just north of the Gila River in southern Arizona and New Mexico (Nowak 1995, pp. 375–397).

Three published studies of morphometric variation conclude that *C. l. baileyi* is a morphologically distinct and valid subspecies. Bogan and Mehlhop (1983) analyzed 253 gray wolf skulls from southwestern North America using principal component analysis and discriminant function analysis. They found that *C. l. baileyi* was one of the most distinct subspecies of southwestern gray wolf (Bogan and Mehlhop 1983, p. 17). Hoffmeister (1986) conducted principal component analysis of 28 skulls, also recognizing *C. l. baileyi* as a distinct southwestern subspecies (pp. 466–468). Nowak (1995) analyzed 580 skulls using discriminant function analysis. He concluded that *C. l. baileyi* was one of only five distinct North American gray wolf subspecies that should continue to be recognized (Nowak 1995, pp. 395–396).

Genetic research provides additional validation of the recognition of *C. l. baileyi* as a subspecies. Three studies demonstrate that *C. l. baileyi* has unique genetic markers that distinguish the subspecies from other North American gray wolves. Garcia-Moreno *et al.* (1996, p. 384) utilized microsatellite analysis to determine whether two captive populations of *C. l. baileyi* were pure *C. l. baileyi* and should be interbred with the captive certified lineage population that had founded the captive breeding program. They confirmed that the two captive populations were pure *C. l. baileyi* and that they and the certified lineage were closely related. Further, they found that as a group, the three populations were the most distinct grouping of North American wolves, substantiating the distinction of *C. l. baileyi* as a subspecies.

Hedrick *et al.* (1997, pp. 64–65) examined data for 20 microsatellite loci from samples of *C. l. baileyi,* northern gray wolves, coyotes, and dogs. They concluded that *C. l. baileyi* was divergent and distinct from other sampled northern gray wolves, coyotes, and dogs. Leonard *et al.* (2005, p. 10) examined mitochondrial DNA sequence data from 34 preextermination wolves collected from 1856 to 1916 from the historical ranges of *C. l. baileyi* and *C. l. nubilus.* They compared these data with sequence data collected from 96 wolves in North America and 303 wolves from Eurasia. They found that the historical wolves had twice the diversity of modern wolves, and that two-thirds of the haplotypes were unique. They also found that haplotypes associated with *C. l. baileyi* formed a unique southern clade distinct from that of other North American wolves. A clade is a taxonomic group that includes all individuals that have descended from a common ancestor.

In another study, vonHoldt *et al.* (2011, p. 7) analyzed SNP genotyping arrays and found *C. l. baileyi* to be the most genetically distinct group of New World gray wolves. Most recently, Chambers *et al.* (2012, pp. 34–37) reviewed the scientific literature related to classification of *C. l. baileyi* as a subspecies and concluded that this subspecies' recognition remains well-supported. Maps of *C. l. baileyi* historical range are available in the scientific literature (Young and Goldman 1944, p. 414; Hall and Kelson, 1959, p. 849; Hall 1981, p. 932; Bogan and Mehlhop 1983, p. 17; Nowak 1995, p. 395; Parsons 1996, p. 106). The southernmost extent of *C. l. baileyi's* range in Mexico is consistently portrayed as ending near Oaxaca (Hall 1981, p. 932; Nowak 1995, p. 395). Depiction of the northern extent of the *C. l. baileyi's* presettlement range among the available descriptions varies depending on the authors' taxonomic treatment of several subspecies that occurred in the Southwest and their related treatment of intergradation zones.

Hall's (1981, p. 932, based on Hall and Kelson 1959) map depicted a range for *C. l. baileyi* that included extreme southern Arizona and New Mexico, with *Canis lupus mogollonensis* occurring throughout most of Arizona, and *C. l. monstrabilis, Canis lupus youngi, C. l. nubilus,* and *C. l. mogollonensis* interspersed in New Mexico. Bogan and Mehlhop (1983, p. 17) synonymized two previously recognized subspecies of gray wolf, *C. l. mogollonensis* and *C. l. monstrabilis,* with *C. l. baileyi,* concluding that *C. l. baileyi's* range included the Mogollon Plateau, southern New Mexico, Arizona, Texas, and Mexico. This extended *C .l. baileyi's* range northward to central Arizona and central New Mexico through the area that Goldman (1944) had identified as an intergrade zone with an abrupt transition from *C. l. baileyi* to *C. l. mogollensis*. Bogan and Mehlop's analysis did not indicate a sharp transition zone between *C. l. baileyi* and *C. l. mogollensis,* rather the wide overlap between the two subspecies led them to synonymize *C. l. baileyi* and *C. l. mogollensis*.

Hoffmeister (1986, p. 466) suggested that *C. l. mogollonensis* should be referred to as *C. l. youngi* but maintained *C. l. baileyi* as a subspecies, stating that wolves north of the Mogollon Rim should be considered *C. l. youngi*. Nowak (1995, pp. 384–385) agreed with Hoffmeister's synonymizing of *C. l. mogollonensis* with *C. l. youngi,* and further lumped these into *C. l. nubilus,* resulting in a purported northern historical range for *C. l. baileyi* as just to the north of the Gila River in southern Arizona and New Mexico. Nowak (1995) and Bogan and Mehlhop (1983) differed in their interpretation of which subspecies to assign individuals that were intermediate between recognized taxa, thus leading to

different depictions of historical range for *C. l. baileyi*.

Subsequently, Parsons (1996, p. 104) included consideration of dispersal distance when developing a probable historical range for the purpose of reintroducing *C. l. baileyi* in the wild pursuant to the Act, by adding a 322-km (200-mi) northward extension to the most conservative depiction of *C. l. baileyi* historical range (*i.e.,* Hall and Kelson 1959). This description of historical range was carried forward in the Final Environmental Impact Statement ''Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States'' in the selection of the Blue Range Wolf Recovery Area as a reintroduction location for *C. l. baileyi* (Service 1996).

Recent molecular genetic evidence from limited historical specimens supports morphometric evidence of an intergradation zone between *C. l. baileyi* and northern gray wolves (Leonard *et al.* 2005, pp. 15–16). This research shows that, within the time period that the historical specimens were collected (1856–1916), a northern clade (i.e., group that originated from and includes all descendants from a common ancestor) haplotype was found as far south as Arizona, and individuals with southern clade haplotypes (associated with *C. l. baileyi*) occurred as far north as Utah and Nebraska. Leonard *et al.* (2005, p. 10) interpret this geographic distribution of haplotypes as indicating gene flow was extensive across the subspecies' limits during this historical period, and Chambers *et al.* (2012, p. 37) agree this may be a valid interpretation.

Statutory Background

The Act authorizes the Service to ''determine whether any species is an endangered species or a threatened species'' (16 U.S.C 1533(a)(1)). ''Species'' is a defined term under the Act (16 U.S.C. 1532(16)), and only ''species'' as so defined may be included on the lists of threatened and endangered species (see 16 U.S.C. 1533(a)(1), (c)(1)). The Act defines ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532(16)). The Act defines ''endangered species'' as a species which is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)) and threatened species as a species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). The word ''range'' refers to the range in which the species currently exists, and the word ''significant'' refers to the value of that portion of the range being considered to the conservation of the species. The ''foreseeable future'' is the period of time over which events or effects reasonably can or should be anticipated, or trends extrapolated. Determinations as to the status of a species must be made solely on the basis of the best scientific and commercial data available (16 U.S.C. 1533(b)(1)).

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to, reclassifying species on, or removing species from the Federal List of Endangered and Threatened Wildlife (List). We may determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five listing factors are: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in reclassifications of species (changing the status from threatened to endangered or vice versa), and removing a species from the List because it is not endangered or threatened (50 CFR 424.11(c), (d)).

The Act's implementing regulations clarify that a species that is listed may only be delisted if it is neither endangered nor threatened for one of three reasons: The species is extinct, the species has recovered and is no longer endangered or threatened, and the original scientific data used at the time the species was classified were in error (50 CFR 424.11(d)). This language does not, however, address the circumstance in which the Service concludes based on the best available data that a group of organisms currently included on the List does not in fact qualify as a ''species'' under the Act. In that circumstance, the Service is not determining that a species is not endangered or threatened, the Service is determining that a group of organisms is not a ''species.'' Although the implementing regulations do not expressly address this circumstance, the Service has the authority under section 4(c)(1) to remove a purported species from the List if the Service determines that it does not qualify as a ''species'' (16 U.S.C. 1533(c)(1)). We note, however, that delisting on this basis is analogous to delisting upon a determination that a species is not threatened or endangered because the original data for classification were in error.

Evaluation of the Current *C. lupus* Listed Entity

Our analysis begins with an evaluation of the current *C. lupus* listing (Figure 1), which derives from the 1978 reclassification (43 FR 9607; March 9, 1978). In our May 5, 2011, proposed rule to revise the List for the gray wolf in the eastern United States we acknowledged that the current *C. lupus* listed entity should be revised. The recent 5-year status review for this entity further provides the basis for this assertion (Service 2012). Below we present our evaluation and conclusion in support of removing the current *C. lupus* entity from the List. Pursuant to this evaluation, our proposed determination as to which entities warrant the protections of the Act is included under Status of Gray Wolf Listable Entities in the Contiguous United States and Mexico later in this proposed rule.

Is the currently listed C. lupus entity a valid listable entity under the Act?

As discussed above, the Act allows us to list species, subspecies, and distinct population segments of any species of vertebrate fish or wildlife (16 U.S.C. 1532(16)). The current *C. lupus* listing (Figure 1) is not an entire species (the species *C. lupus* was never deemed threatened or endangered given its abundance across its holarctic range) or an entire single gray wolf subspecies (the current listing occurs across an area occupied by multiple purported subspecies; see Taxonomy section). Therefore, if the current listing is to be maintained, it must be as a DPS.

The concept of a DPS is unique to the Act—it does not have an independent scientific meaning. Unlike species and subspecies, a DPS is not a taxonomic term. Rather, the term ''distinct population segment'' refers to certain populations of vertebrates (i.e., less than the entire range of a taxonomic vertebrate species or subspecies) as explained in the DPS policy. The Act's implementing regulations define a ''population'' as a ''group of fish or wildlife . . . in common spatial arrangement that interbreed when mature'' (50 CFR 17.3). That group may consist of a single collection of organisms, or multiple loosely bounded, regionally distributed collections of organisms all of the same species or subspecies. Therefore, consistent with our standard practice (see 74 FR 15125

''Defining the Boundaries of the NRM DPS,'' April 2, 2009, and 76 FR 81670 ''Geographical Area of the Western Great Lakes DPS,'' December 28, 2011), before applying the discreteness and significance tests laid out in the DPS Policy, we must first identify one or more populations and the spatial arrangement or range which they share. To meet the definition of a ''population,'' for the purposes of the DPS Policy the group of vertebrate fish or wildlife identified must be in ''common spatial arrangement'': In other words, there must first be a reasonable correlation between the group and the geographic area used to describe its range.

To consider whether the currently listed entity describes a population of *C. lupus* in an appropriate range that should be evaluated against the standards of the 1996 DPS Policy, we first discuss how the history of gray wolf listing and recent scientific information relate to this question. Based on this information we conclude that neither the 1978 reclassification nor the current listing represent valid species under the Act. We then analyze the current data regarding wolves within the current listed entity, the degree to which that data confirms relevant populations of gray wolves, and the relationship any such populations bear to the geographic scope of the current listing. Based on this information, we further conclude that the ''spatial arrangement'' identified in the current listing does not correlate to the current population(s) of *C. lupus* found within that range.

History of the C. lupus listing as it relates to DPS—When the gray wolf was reclassified in March 1978 (replacing multiple subspecies listings with two *C. lupus* population listings as described further in the Previous Federal Actions section), it had been extirpated from much of its historical range in the contiguous United States. Although the 1978 reclassification listed two gray wolf entities (a threatened population in Minnesota and an endangered population throughout the rest of the contiguous United States and Mexico), these listings were not predicated upon a formal DPS analysis, because the reclassification predated the November 1978 amendments to the Act, which revised the definition of ''species'' to include distinct population segments of vertebrate fish or wildlife, and our 1996 DPS Policy.

The broadly defined geography of the 1978 reclassification was employed as an approach of convenience (as noted in 47 FR 9607, March 9, 1978), rather than an indication of where gray wolves existed or where gray wolf recovery would occur. Thus, the 1978 reclassification resulted in inclusion of large areas of the contiguous United States where gray wolves were extirpated, as well as the mid-Atlantic and southeastern United States—west to central Texas and Oklahoma—an area that is generally accepted not to be within the historical range of *C. lupus* (Young and Goldman 1944, pp. 413–416, 478; Nowak 1995, p. 395, Fig. 20). While this generalized approach to the listing appropriately protected dispersing wolves throughout the historical range of *C. lupus* and facilitated recovery in the NRM and WGL regions, it also erroneously included areas outside the species' historical range and was misread by some members of the public as an expression of a larger gray wolf recovery effort not required by the Act and never intended by the Service.

The Act does not require us to restore the gray wolf (or any other species) to all of its historical range or even to a majority of the currently suitable habitat. Instead, the Act requires that we recover listed species such that they no longer meet the definitions of ''threatened species'' or ''endangered species.'', *i.e.,* are no longer in danger of extinction now or in the foreseeable future. For some species, recovery may require expansion of their current distribution, but the amount of expansion is driven by a species' biological needs affecting viability and sustainability, and not by an arbitrary percent of a species' historical range or currently suitable habitat. Many other species may be recovered in portions of their historical range or currently suitable habitat by removing or addressing the threats to their continued existence. And some species may be recovered by a combination of range expansion and threats reduction. There is no set formula for how recovery must be achieved.

As stated previously, the 1978 reclassification stated that ''biological subspecies would continue to be maintained and dealt with as separate entities'' (43 FR 9607, March 9, 1978). Accordingly, regional recovery plans were developed and implemented in the Western Great Lakes in 1978 (revised in 1992) (Service 1978, entire; Service 1992, entire), the Northern Rocky Mountains in 1980 (revised in 1987) (Service 1980, entire; Service 1987, entire), and the Southwest in 1982 (this plan is currently being revised) (Service 1982, entire). This approach was an appropriate use of our discretion to determine how best to proceed with recovery actions. These recovery efforts covered all gray wolf populations confirmed in the contiguous United States since passage of the Act, and either these efforts have worked, or are working, to conserve all of the genetic diversity remaining in gray wolves south of Canada after their widespread extirpation (Leonard *et al.* 2005, entire). Thus, the goal of the Act has been achieved in the Northern Rocky Mountains (76 FR 25590, May 5, 2011 and 77 FR 55530, September 10, 2012) and Western Great Lakes (76 FR 81666, December 28, 2011) and is still a work in progress in the Southwest (see *C. l. baileyi* analysis below).

Recent scientific information relevant to the validity of the C. lupus listing—In addition to the issues identified above, recent scientific research further necessitates our revisiting the current listing for *C. lupus.* The most recent scientific information indicates that the eastern wolf, previously described as the subspecies *C. l. lycaon,* with a historical range that includes the northeastern United States and portions of the upper Midwest United States (eastern and western Great Lakes regions) should be recognized as a separate species, *C. lycaon* (See Taxonomy section). These new data indicate that additional geographic areas contained within the current listed area were not historically occupied by gray wolves (specifically, the northeastern United States) and thus are erroneously included in the current gray wolf listing.

Synthesis—Combining the erroneous inclusion of the southeastern United States in the 1978 reclassification with the new data further restricting the historical range of *C. lupus,* we determine that essentially the entire eastern third of the contiguous United States was erroneously included in the 1978 listing, and is still included in the current listing. As a result, there was not a reasonable correlation between the group of gray wolves in the contiguous United States (minus Minnesota) and Mexico in 1978, nor is there today. Therefore, the 1978 listing did not describe, nor does the current listing describe, a valid ''population,'' which is a prerequisite for a DPS. This determination alone requires that the current listed entity be delisted pursuant to section 4(c)(1) because it is not a ''species'' under the Act.

Distribution of gray wolves within the described boundary of the currently listed entity—Even if *C. lupus* historically had been found throughout the contiguous United States, with the recent recovery and delisting of gray wolf populations in the NRM and WGL (see Previous Federal Actions section) and the associated revisions to the 1978

listing, the described boundary of the *C. lupus* listed entity has been modified and now includes all or portions of only 42 States, as opposed to the original 48 States, and Mexico (Figure 1). The gross mismatch between the group of wolves protected by the current listing (see below) provides an independent basis for determining that the current listed entity is not a DPS.

As stated above, our regulations define a ''population'' as a ''group of fish or wildlife . . . in common spatial arrangement that interbreed when mature'' (50 CFR 17.3). We have refined that definition in experimental gray wolf reintroduction rules to mean ''at least two breeding pairs of gray wolves that each successfully raise at least two young'' annually for 2 consecutive years (59 FR 60252 and 60266, November 22, 1994). This definition represents what we believe are the minimum standards for a gray wolf population (Service 1994). The courts have supported this definition. The U.S. Court of Appeals for the Tenth Circuit found that ''by definition lone dispersers do not constitute a population or even part of a population, since they are not 'in common spatial arrangement' sufficient to interbreed with other members of a population'' (*Wyoming Farm Bureau Federation* v. *Babbitt,* 199 F.3d 1224, 1234 (10th Cir. 2000)). The Court of Appeals for the Ninth Circuit held that, despite ''sporadic sightings of isolated indigenous wolves in the release area [a gray wolf reintroduction site], lone wolves, or 'dispersers,' do not constitute a population'' under the Act (*U.S.* v. *McKittrick,* 142 F. 3d 1170, 1175 (9th Cir.), cert. denied, 525 U.S. 1072 (1999)). Thus, the courts have upheld our interpretation that a ''population'' must include two or more breeding pairs.

Below, we provide specific information on the distribution of gray wolves within the described boundary of the current *C. lupus* listed entity.

A single wild gray wolf population (*C. l. baileyi*), of at least 75 wolves (as of December 31, 2012), inhabits the southwestern United States today in central Arizona and New Mexico (Figure 2). In Mexico, efforts to reestablish a wild population in Mexico began in 2011. Of eight wolves released between October 2011 and October 2012, two wolves are ''fate unknown,'' four are confirmed dead, and two are alive as of January 2, 2013 (Service, our files). Additional releases in Mexico are expected in 2013. In addition, a captive population of 240 to 300 *C. l. baileyi* exists in the United States and Mexico today in about 50 captive breeding facilities. For more information on gray wolves in the southwestern United States and Mexico see the *C. l. baileyi* analysis below.

There are currently three confirmed gray wolf packs in the western two-thirds (where gray wolves are listed as endangered) of Washington State (Lookout pack, Teanaway pack, and Wenatchee pack). Reproduction was confirmed in the Teanaway pack in June 2012, has not been documented since 2009 in the Lookout pack, and has not yet been documented in the Wenatchee pack. To date, two radio-collared wolves from the Imnaha pack in northeast Oregon have dispersed west, across the NRM DPS boundary, and are currently in the portion of Oregon where they have endangered status. One of these wolves spent over 1 year in northern California before returning to Oregon in March of 2013. However, no packs or reproduction have been documented in those portions of Oregon or California. For more information on the gray wolves in the Pacific Northwest, see the Pacific Northwest DPS analysis below.

We also have recent records of a few lone long-distance dispersing individual gray wolves within the boundary of the current *C. lupus* listed entity; however, these lone individuals are believed to be dispersing away from the more saturated habitat in the primary range of the recovered NRM and WGL DPSs or Canada populations into peripheral areas where wolves are scarce or absent (Licht and Fritts 1994, p. 77; Licht and Huffman 1996, pp. 171–173; 76 FR 26100, May 5, 2011; Jimenez *in litt.* 2012. For example, a gray wolf dispersing south from the NRM DPS was trapped near Morgan, Utah in 2002 and another was killed in an agency control action in Utah in 2010 (Jimenez *in litt.* 2012). In addition, we have two records for individual wolves near Idaho Springs and Rifle, Colorado, in 2004 and 2009, respectively (Jimenez *in litt.* 2013). An adult gray wolf killed by a vehicle near Sturgis, South Dakota, was a disperser from the Greater Yellowstone area in the Rocky Mountains to the west (Fain *et. al.* 2010 cited in 76 FR 26100). A few individual dispersing gray wolves have been reported in other areas of the Midwest, including a gray wolf that dispersed from Michigan to north-central Missouri (Mech and Boitani 2003, p. 16; Treves *et al.* 2009, p. 194) and another that dispersed from Wisconsin to eastern Indiana (Thiel *et al.* 2009, p. 122 and Treves *et al.* 2009, p. 194). At least two wolves have been reported in Illinois, one in 2002 and one in 2005 (Great Lakes Directory 2003, unpaginated). Two individual wolves were also reported (on different occasions) in Nebraska (Anschutz *in litt.* 2003, Anschutz *in litt.* 2006, Jobman *in litt.* 1995).

Although it is possible for these dispersers to encounter and mate with another wolf outside the primary range of the recovered populations, we have no information demonstrating that any of these naturally dispersing animals have formed persistent reproducing packs or constitute a population (for a more thorough discussion on Pacific Northwest wolves and whether they constitute a population, see the Pacific Northwest DPS analysis below). Thus, *C. l. baileyi* is the only population within the area where gray wolves are currently listed, with a likelihood that wolves in the Pacific northwest will soon meet this standard (again, see the Pacific Northwest DPS analysis below for more information on the status of wolves in this area). We are not aware of any other confirmed gray wolf populations occurring within the described boundary of the current *C. lupus* listed entity (Figure 1).

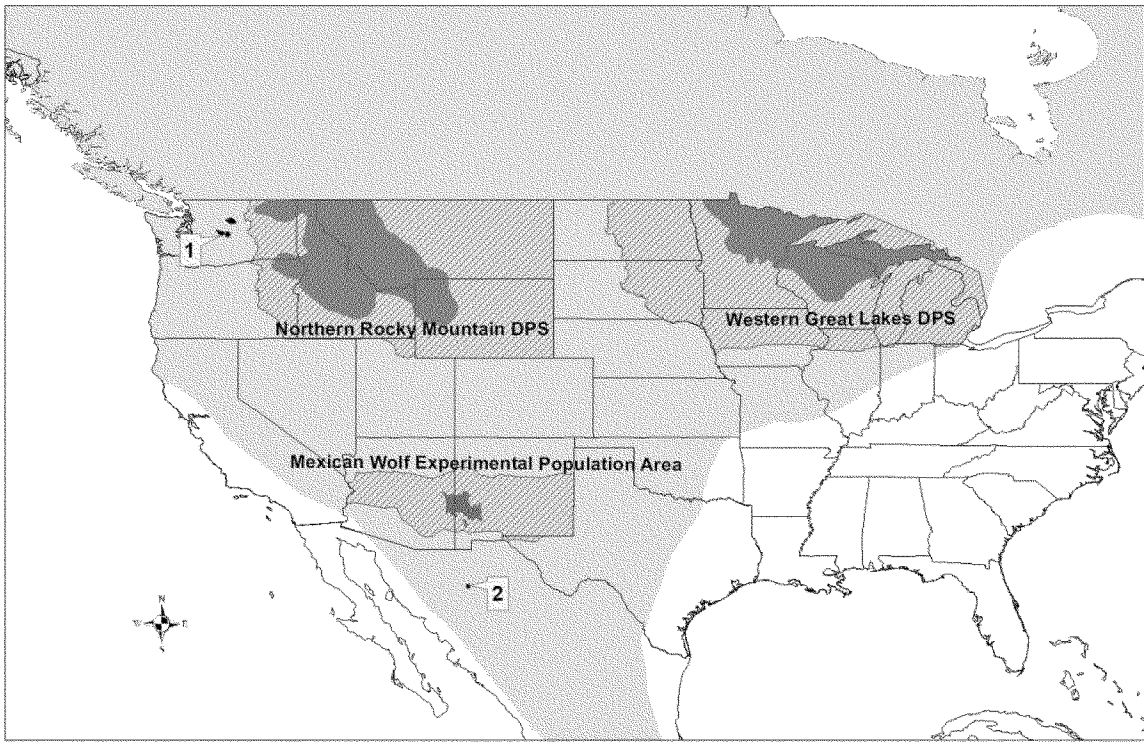


Figure 2: Current distribution of gray wolves (*C. lupus*), including the recovered and delisted populations, in the contiguous United States and Mexico. Light-gray areas represent the approximate historical distribution of gray wolves. Cross-hatched areas represent the boundaries of the Northern Rocky Mountain (NRM) Distinct Population Segment (DPS), Western Great Lakes (WGL) DPS, and Mexican Wolf Experimental Population Area (MWEPA). Both the NRM DPS and WGLDPS are recovered and delisted and not part of the currently listed entity (see Figure 1). Darker areas within the cross-hatched areas represent our estimation of currently occupied range within the DPSs or MWEPA. Gray wolf packs that currently exist in: (1) Washington and (2) Mexico are illustrated as black polygons. Map is for illustrative purposes only and does not address suitable habitat for gray wolves.

Based on the current distribution of gray wolves in the contiguous United States and Mexico, we determine that the only gray wolves that currently meet our definition of a gray wolf population, outside of the recovered and delisted NRM and WGL gray wolf populations, is the population of gray wolves (*C. l. baileyi*) in the southwestern United States (see *C. l. baileyi* analysis below for a detailed discussion of the wolves occupying that region) and possibly the gray wolves currently occupying the Pacific Northwest (specifically, those wolves outside of the NRM DPS's western boundary and south of the Canadian border). As we explain in detail below (see Pacific Northwest—Do Wolves in This Area Constitute a Population?), although the gray wolves in the Pacific Northwest do not yet constitute a population according to our 1994 definition, it is possible that additional breeding pairs have gone

undetected or that the documented breeding pairs have successfully bred in consecutive years without detection.

Synthesis—Instead of identifying an appropriate geographic area from scratch for the purpose of analyzing a potential new DPS listing, as is our standard practice, we have an existing listing. Therefore, we must compare the geographic scope of the existing listing with the population identified.

It is evident that the listed entity as it is currently described in the CFR (Figure 1) does not correlate with the existing *C. lupus* population, which includes the population inhabiting the southwestern United States and the possible existing (or future) population inhabiting the Pacific Northwest United States (Figure 2). The current *C. lupus* listing includes large areas of the contiguous United States that the best available information indicates are outside of the historical range of the species. Additionally, no other areas within the boundary of the current *C. lupus* listed entity, outside of those areas being evaluated for *C. l. baileyi* recovery, have been identified as necessary for recovery of any existing listable *C. lupus* entity. Therefore, we conclude that the current listed *C. lupus* entity does not appropriately describe the existing gray wolf population, and is therefore not a valid DPS. Furthermore, the current listing does not reflect what is necessary or appropriate for wolf recovery under the Act for the existing gray wolf population.

For these reasons we also conclude that it would not be appropriate to conduct a DPS analysis on the extant population of gray wolves occurring in the southwestern United States combined with the possible *C. lupus* population occurring in the Pacific Northwest United States using the broadly defined geography of the currently listed entity as its boundary. It is instead more logical to take a fresh comprehensive look at the status of gray wolves in the contiguous United States and Mexico by employing a standard process of analysis and the best available information to carefully consider whether the gray wolves that make up the current *C. lupus* listed entity are part of the *C. lupus* species, or a subspecies, or DPSs of *C. lupus* that warrant protections under the Act.

Conclusion

As stated previously, the current *C. lupus* listed entity is neither an entire species nor an entire single subspecies. It was listed prior to the November 1978 amendments to the Act and the issuance of the 1996 DPS policy, and is the outcome of a broad, generalized contiguous United States and Mexico reclassification and subsequent targeted delistings of the recovered NRM and WGL gray wolf populations (see Previous Federal Actions section). Further, the 1978 listing erroneously included the eastern United States, a region of the contiguous United States that the best scientific information indicates is outside of the historical range of *C. lupus* (see *Wolf Species of the United States* section). Therefore, based on the best scientific information available we find that the 1978 listing did not represent a valid ''species'' under the Act. The *C. lupus* listed entity as it is currently described on the List derives from the 1978 listing and shares the same deficiency. In addition, the current listing suffers from the additional problem that there is not a reasonable correlation between the remaining population and the geographic scope of the listing. Therefore, the current *C. lupus* listed entity is not a ''species'' as defined by the Act, and we propose to remove it from the List in accordance with 16 U.S.C. 1533(c)(1).

Nonetheless, we must also consider whether this entity should be replaced with a valid listing for the *C. lupus* species, or a subspecies, or a DPS of *C. lupus* that is threatened or endangered in the contiguous United States and Mexico. If any gray wolf population occupying any portion of the current *C. lupus* listed entity is deemed part of a valid listable entity that is threatened or endangered under the Act, the population must be separately listed concurrent with any final decision to remove the current *C. lupus* listed entity from the List. Therefore, currently listed gray wolves that warrant listing under the Act will never experience a lapse in the Act's protections due to this action. The remainder of this rule considers this question.

Status of Gray Wolf Listable Entities in the Contiguous United States and Mexico

Given our intention to remove the current *C. lupus* entity from the List, we now consider whether and to what extent any subspecies or populations of *C. lupus* should be listed in the contiguous United States and Mexico. More specifically, we address whether any gray wolves covered by the current *C. lupus* listed entity (Figure 1) belong to a valid listable entity that warrants the protections of the Act. Because we are focused on the status of gray wolves in the contiguous United States and Mexico, we concentrate our analyses on the *C. lupus* species and subspecies or DPSs of *C. lupus* with ranges that are within the contiguous United States and Mexico. Thus, this phase of the analysis begins with a consideration of the status of *C. lupus* rangewide followed by analyses of potential threats facing each of three North American gray wolf subspecies—*C. l. nubilus, C. l. occidentalis,* and *C. l. baileyi*—as well as consideration of a potential DPS of *C. lupus.* If we determine that the species (*C. lupus*), or a subspecies (*C. l. nubilus, C. l. occidentalis, C. l. baileyi*), or a DPS of *C. lupus* is threatened or does not warrant the protections of the Act, then we will consider whether there are any significant portions of their ranges where they are in danger of extinction or likely to become endangered within the foreseeable future.

Summary of Factors Affecting the Species

As stated previously (see Statutory Background section above), Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to, reclassifying species on, or removing species from the Federal List of Endangered and Threatened Wildlife (List). We may determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five listing factors are: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in reclassifications of species (changing the status from threatened to endangered or vice versa), and removing a species from the List because it is not endangered or threatened (50 CFR 424.11(c), (d)).

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 (16 U.S.C. 1532(6)), and is ''threatened'' if it is likely to become endangered in the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532 (20)). The word ''range'' refers to the range in which the species currently exists, and the word ''significant'' refers to the value of that portion of the range being considered to the conservation of the species. The ''foreseeable future'' is the period of time over which events or effects reasonably can or should be anticipated, or trends extrapolated.

In considering what factors might constitute threats, we must look beyond

the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species, such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could affect a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (i.e., it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

We considered and evaluated the best available scientific and commercial information for these analyses. Information pertaining to *C. lupus, C. l. nubilus, C. l. occidentalis,* and *C. l. baileyi* in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

Does the rangewide population of C. lupus warrant the protections of the Act?

Our first evaluation considers whether the gray wolves that are included in the current *C. lupus* listing (Figure 1) warrant the protections of the Act as part of a species-level rangewide listing of *C. lupus.* We begin this evaluation by summarizing the historical and current global distribution of gray wolves, followed by a discussion of the species' current status and threats.

C. lupus—Historical Global Distribution

Canis lupus historically occurred across much of North America, Europe, and Asia (Mech 1970, pp. 32–33). Recent genetic work now suggests gray wolves also occurred (and still occur) in portions of North Africa (Rueness *et al.* 2011, pp. 1–5; Gaubert *et al.* 2012, pp. 3–7). In North America, *C. lupus* formerly occurred from the northern reaches of Alaska, Canada, and Greenland to the central mountains and the high interior plateau of southern Mexico (Mech 1970, p. 31; Nowak 2003, p. 243).

C. lupus—Current Global Distribution

The historical worldwide range for *C. lupus* has been reduced by approximately one-third (Mech and Boitani 2010, p. 5). A majority of this range contraction has occurred in developed areas of Europe, Asia, Mexico, and the United States by poisoning and deliberate targeted elimination (Boitani 2003 pp. 318–321; Mech and Boitani 2010, p. 5). *Canis lupus* currently occupies portions of North America, Europe, North, Central and South Asia, the Middle East, and North Africa (Mech and Boitani 2004, pp. 125–128; Linnell *et al.* 2008, p. 48; 77 FR 55539; 76 FR 81676; Rueness *et al.* 2011, pp. 1–5; Gaubert *et al.* 2012, pp. 3–7). Summaries of rangewide population data, by range country, are available in Boitani 2003 (pp. 322–323) and Mech and Boitani 2004 (pp. 125–128). In addition, a detailed overview of *C. lupus* populations in Europe (including the European part of Russia) can be found in Linnell *et al.* 2008 (pp. 48, and 63–67). Available population data for North America are presented in detail in our recent rulemakings (77 FR 55539, September 10, 2012 and 76 FR 81676, December 28, 2011) and in the status reviews below. Based upon recent available population data for the species, *C. lupus* number more than 160,000 individuals globally (Mech and Boitani 2004, pp. 125–128; Linnell *et al.* 2008, p. 48; 77 FR 55539; 76 FR 81676) and, according to one estimate, may number as high as 200,000 (Boitani 2003, pp. 322–323).

Current Status of C. lupus

The most recent global assessment by the International Union for Conservation of Nature (IUCN) Species Survival Commission Wolf Specialist Group classifies the species *C. lupus* as Least Concern globally (Mech and Boitani 2010, entire), although at the regional level some populations are seriously threatened. Plants and animals that have been evaluated to have a low risk of extinction are classified as Least Concern. Widespread and abundant taxa are included in this category. The worldwide population trend for the species is currently identified as stable (Mech and Boitani 2010, p. 4). Gray wolves are found in 46 countries around the world, and the species maintains legal protections in 21 countries (Boitani 2003, pp. 322–323). The arrest of wolf population declines and subsequent natural recolonization occurring since 1970 is attributed to legal protection, land-use changes, and human population shifts from rural areas to cities (Mech and Boitani 2010, p. 5). Mech and Boitani generally identify the following as ongoing threats to the species: (1) Competition with humans for livestock, especially in developed countries; (2) exaggerated concern by the public concerning the threat and danger of wolves; and (3) fragmentation of habitat, with resulting areas becoming too small for populations with long-term viability (Mech and Boitani 2010, p. 5).

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement between governments aimed to ensure that international trade in specimens of wild animals and plants does not threaten their survival. CITES works by subjecting international trade in specimens of selected species to certain controls. The species covered by CITES are listed in three Appendices according to the protection they need. Appendix II includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival. Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances. *Canis lupus* is listed as Appendix II (except the populations of Bhutan, India, Nepal, and Pakistan; which are included in Appendix I). These listings exclude the domesticated form and the dingo which are referenced as *Canis lupus familiaris* and *Canis lupus dingo* (*www.cites.org,* accessed on July 13, 2012).

Conclusion

Although *C. lupus* has undergone significant range contraction in portions of its historical range, the species continues to be widespread and, as a whole, is stable. The species is currently protected in many countries; however, in some portions of the range, *C. lupus* populations are so abundant that they are managed as furbearers with open hunting and trapping seasons. In addition, *C. lupus* is currently categorized as Least Concern by the IUCN. We have found no substantial evidence to suggest that gray wolves are at risk of extinction throughout their global range now or are likely to become so in the foreseeable future. Further, we can point to the recovered, and delisted, populations in the northern Rocky Mountains and the western Great Lakes and our analyses for the North American subspecies *C. l. nubilus* and *C. l. occidentalis* below as evidence that the species is not at risk of extinction throughout all of its range; therefore, we will not consider this question further for the purposes of this proposed rule. See the Significant Portion of the Range Analysis section below for our evaluation as to whether *C. lupus* may

or may not be in danger of extinction in a significant portion of its range.

Does the North American subspecies C. l. nubilus warrant the protections of the Act?

C. l. nubilus—Historical Distribution

The historical range of *C. l. nubilus* was described by Nowak (1995, p. 396) generally as coastal southeastern Alaska, western Canada, the contiguous United States from the Pacific to the Great Lakes region, and eastern Canada except the extreme southeast, and occasionally west central Greenland.

C. l. nubilus—Current Distribution

For purposes of this review we will discuss the current distribution of *C. l. nubilus* by state, province, or region in which it is found. Management of the gray wolf species is carried out by individual states and provinces, complicating the discussion of status by biological population. No state or province in the range of *C. l. nubilus* monitors wolf populations to the extent that precise estimates of population size can be made. For this reason, population estimates should be regarded as estimates based on professional judgment of the agencies involved.

United States—Canis lupus nubilus does not occupy its historical range in the United States with the exception of the western Great Lakes region (delisted due to recovery, 76 FR 81666, December 28, 2011), southeastern Alaska, and a small number of wolves in the Pacific Northwest that appear to be an admixture with *C. l. occidentalis* (Figure 2). The first account of breeding by wolves (the Lookout pack) in Washington State since the 1930s was documented in the North Cascades in 2008. In the spring of 2011, a new pack (the Teanaway pack) was documented, and genetic testing of a member of the pack confirmed that it was a gray wolf closely related to (consistent with being an offspring of) the Lookout pack breeding pair (Robinson *et al.* 2011, *in litt.,* pp. 1–2). In the spring of 2013, a group of two wolves, the Wenatchee pack, was documented in the listed area. It is unknown whether these wolves will remain resident in the area. Dispersing wolves have been documented in Oregon, and one in California, but there currently are no packs of known *C. l. nubilus* origin in either state.

Despite the fact that the area is recognized as historical *C. l. nubilus* range, microsatellite genotyping indicated that the two packs currently occupying Washington west of the NRM DPS are descended from wolves occurring in (1) coastal British Columbia (*C. l. nubilus*) and (2) northeastern British Columbia (*C. l. occidentalis*), northwestern Alberta (*C. l. occidentalis*), or the reintroduced populations in central Idaho and the greater Yellowstone area (*C. l. occidentalis*) (Pollinger 2008, *in litt.;* Nowak 1995, p. 397). Intergrade zones, or zones of reproductive interaction, between neighboring wolf populations have long been a recognized characteristic of historical gray wolf distribution (Mech 1970, p. 223; Brewster and Fritts 1995, p. 372). While historical subspecies delineations based on morphology suggest that a biological boundary limiting dispersal or reproductive intermixing likely existed between eastern and western Oregon and Washington prior to the extirpation of wolves from the region (Bailey 1936, pp. 272–275; Young and Goldman 1944, p. 414; Hall and Kelson 1959, p. 849, Figure 6), the boundary was likely not impermeable by dispersers. Additionally, Chambers *et al.* (2012, p. 43) argues that historical or modern boundaries should not be viewed as static or frozen in any particular time but instead, as the result of dynamic processes, boundaries can shift over time.

We expect dispersal from both sources (western British Columbia and the NRM DPS) to continue, but the recolonization of this area is in its infancy, and the ultimate recolonization pattern of wolves in historical *C. l. nubilus* range is unpredictable.

British Columbia—Wolves currently range throughout most of British Columbia, with *C. l. nubilus* occupying the western and coastal regions and *C. l. occidentalis* occupying the inland portion of the province. *C. l. nubilus* has reoccupied most of its historical range, including Vancouver Island and other islands along the mainland coast. Surveys in 1997 estimated 8,000 wolves in British Columbia, and populations are believed to be increasing (COSEWIC 2001, p. 22; Hatler *et al.* 2003, p. 5). More recent information suggests that wolf populations are increasing in some areas as a result of natural range expansion following control efforts in the 1950s and 1960s, and stable in other areas. Overall, the province-wide wolf population is thought to have increased since the 1990s, but not substantially (British Columbia Ministry of Forests, Lands and Natural Resource Operations 2012). Agencies generally do not distinguish among subspecies when reporting harvest or estimating population sizes; however, COSEWIC (2001 p. 38) estimated wolf numbers by ecological areas. They concluded that approximately 2,200 wolves occupy the Pacific Ecological Area, which coincides with the historical range of *C. l. nubilus.*

Northwest Territories and Nunavut—An estimated 10,000 gray wolves inhabited the Northwest Territories and Nunavut in 2001 (COSEWIC 2001, p. 22). The COSEWIC report does not differentiate among subspecies; however, many of these wolves were likely to be *C. l. nubilus* due to their geographic location, including those wolves found in most of mainland Nunavut and a portion of mainland Northwest Territories.

Manitoba—Canis lupus nubilus occupies boreal forests and tundra in northern Manitoba. The total wolf population numbers approximately 4,000 to 6,000 and appears to be stable (COSEWIC 2001, p. 21; Hayes and Gunson 1995, p. 22). Although a population estimate for each subspecies does not exist, most of the high quality wolf habitat occurs in northern Manitoba, where human densities and rates of agriculture are lower; therefore, we expect at least half of the 4,000–6,000 wolves occupy the north, where they fall into *C. l. nubilus* range.

Ontario—Ontario is home to both *C. l. nubilus* and *C. lycaon.* Wolves currently occupy approximately 85 percent of their historical range in this province, and although current ranges of the two taxa are not entirely clear, *C. l. nubilus* likely dominates the boreal and tundra regions of the province in the north, while *C. lycaon* probably originally occupied most of southern Ontario (Ontario Ministry of Natural Resources 2005, p. 4). Population estimates suggest that around 5,000 wolves (*C. l. nubilus*) occupy the northern regions and that a total of 8,850 wolves (*C. l. nubilus* and *C. lycaon*) exist province-wide (Ontario Ministry of Natural Resources 2005, pp. 7–9).

Quebec—Wolves (*C. l. nubilus* and *C. lycaon*) currently occupy the entire province of Quebec except the regions south of the St. Lawrence River (Jolicoeur and Hénault 2010, p. 1). Like Ontario, the purported boundaries between the two subspecies have always been approximate and vary among studies. *Canis lupus nubilus* generally occupies areas north of Quebec City, within the distribution of moose and caribou. The total population is estimated at 7,000 individuals (Jolicoeur and Henault 2010, p. 1), with an increasing trend the past 10 years, following deer population trends and despite heavy exploitation (Jolicoeur and Henault 2010, p.3). Subspecies population estimates are not available; however, the area occupied by *C. lycaon*

is small compared to that occupied by *C. l. nubilus,* and it is likely that the majority of the 7,000 wolves in Quebec are *C. l. nubilus.*

Newfoundland/Labrador—Canis lupus nubilus is extirpated from Newfoundland. Approximately 1,500 wolves occupy Labrador (COSEWIC 2001, p. 18).

The Committee on the Status of Endangered Wildlife in Canada (COSEWIC) published an assessment and status report on *C. lupus* in 2001 (COSEWIC 2001, entire). The assessment evaluates the status and protection level of wolves across jurisdictions. Assessments are complete for *C. l. nubilus, C. l. occidentalis,* and *C. lycaon.* The subspecific ranges described are not entirely consistent with those used in this proposed rule (*C. l. occidentalis* range described by COSEWIC included Manitoba, Ontario, Quebec, and Newfoundland-Labrador, which the Service now considers part of *C. l. nubilus* range, following Nowak (2002, pp. 395–596)). This discrepancy is inconsequential, however, as COSEWIC found that both *C. l. nubilus* and *C. l. occidentalis* are ''Not at Risk'' based on widespread, large, stable populations, with no evidence of decline over the last 10 years despite liberal harvest (COSEWIC 2001, p. ii). Furthermore, Environment Canada found that export of legally obtained harvested wolves is nondetrimental to the survival of *C. lupus* in Canada (Environment Canada 2008). Supporting information included biological characteristics, current status, harvest management, control of harvest, harvest trend, harvest monitoring, benefits of harvest, and protection of harvest. The finding describes stable to increasing populations, a lack of threats, and high confidence in the current Canadian harvest management system. Most jurisdictions operate under an adaptive management strategy, which imposes strict control of harvest and is reactive to changing conditions, with the aim of ensuring sustainable harvest and maintaining biodiversity.

Summary of Information Pertaining to the Five Factors

The portion of the range of *C. l. nubilus* encompassed by the Western Great Lakes DPS was recently delisted due to recovery (76 FR 8166). Therefore, this analysis focuses on assessing threats to wolves in the remaining portion of the subspecies' range. Gray wolves that occur in the historical range of *C. l. nubilus* in the contiguous United States, outside of the WGL DPS, are currently listed as endangered under the Act. Thus, in this analysis we evaluate threats currently facing the subspecies and threats that are reasonably likely to affect the subspecies if the protections of the Act were not in place. Within the likely historical range of *C. l. nubilus* in the central United States, the Southern Rocky Mountains and Colorado Plateau, and the Pacific Northwest of the United States, wolves were extirpated soon after colonization and establishment of European-style agriculture and livestock growing. This range contraction appears to be permanent (with the exception of the Pacific Northwest, which is actively being recolonized) and does not appear to be contracting further at this time. The analysis of the Five Factors below does not consider the potential for affects to *C. l. nubilus* in areas where the subspecies has been extirpated, rather effects are considered in the context of the present population. We do not consider historical range contraction, by itself, to represent a threat to a species, but loss of range is reflected in the current status of a species. In all cases, threat factors are evaluated in the context of the current species status, therefore in some cases, historical range contraction can affect the outcome of the Five Factor analysis.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Wolves are habitat generalists (Mech and Boitani 2003, p. 163) and once occupied or transited most of the United States and Canada. However, much of the historical range of *C. l. nubilus* (Chambers *et al.* 2012, pp. 34–42) within this area has been modified for human use. While lone wolves can travel through, or temporarily live, almost anywhere (Jimenez *et al.* In review, p. 1), much of the historical range is no longer suitable habitat to support wolf packs (Oakleaf *et al.* 2006, p. 559; Carroll *et al.* 2006, p. 32, Mladenoff *et al.* 1995, p. 287), regardless of subspecies. The areas that wolves currently occupy correspond to ''suitable'' wolf habitat as modeled by Oakleaf *et al.* (2006, entire), Carroll *et al.* (2006, entire), Mladenoff (1995, entire), and Mladenoff *et al.* (1999, entire). Although these models analyzed only habitat in the contiguous United States, the principles of suitable wolf habitat in Canada are similar; that is, wolves persist where ungulate populations are adequate to support them and conflict with humans and their livestock is low. The areas considered ''unsuitable'' in these models are not occupied by wolves due to human and livestock presence and the associated lack of tolerance of wolves due primarily to livestock depredation.

Our 2009 NRM DPS delisting rule includes more information on wolf suitable-habitat models (74 FR 15123, pp. 15157–15159). In that document we concluded that the most important habitat attributes for wolf-pack persistence are forest cover, public land, high ungulate (elk) density, and low livestock density. Unsuitable habitat is characterized by low forest cover, high human density and use, and year-round livestock presence (Oakleaf *et al.* 2006, Fig. 2). We conclude that similar areas in adjacent Canada are also unsuitable for wolf colonization and occupation for the same reasons.

Canis lupus nubilus maintains robust populations across much of its historical range, with the exception of prairie areas and large intermountain valleys in southern portions of Canada where conflicts with humans preclude wolf presence, large portions of the central United States that have been irreversibly modified for human use, and throughout the Southern Rocky Mountains and Colorado Plateau, northern California, western Oregon, and western Washington. It is not uncommon for recolonization to occur by subspecies other than those historically present because of changes in distribution.

Sufficient suitable habitat exists in the area occupied by *C. l. nubilus* to continue to support wolves into the future (Mladenoff *et al.* 1995, pp. 286–289; Mladenoff *et al.* 1999, pp. 41–43; Carroll *et al.* 2006). Wolf populations should remain strong in these areas with management activities that focus on wolf population reduction areas as needed to maintain populations of wild ungulates and reduce conflicts with livestock. Traditional land–use practices throughout the vast majority of the subspecies' current range do not appear to be affecting viability of wolves, and do not need to be modified to maintain the subspecies. We do not anticipate overall habitat changes in the subspecies' range to occur at a magnitude that would impact the subspecies rangewide, because wolf populations are distributed across the current range, are strong, and are able to withstand high levels of mortality due to their high reproductive rate and vagility (Fuller *et al.* 2003, p. 163; Boitani 2003, pp. 328–330). Much of the subspecies' range occurs on public land where wolf conservation is a priority and conservation plans have been adopted to ensure continued wolf persistence (73 FR 10514, p. 10538). Areas in Canada within the subspecies' range include large areas with little human and livestock presence and,

therefore, little to no effect on wolf persistence.

Other Components of Wolf Habitat—Another important factor in maintaining wolf populations is the native ungulate population. Primary wild ungulate prey within the range of *C. l. nubilus* include elk, white-tailed deer, mule deer, moose, bison, and caribou. Bighorn sheep, dall sheep, mountain goats, and pronghorn also are common but not important as wolf prey. Each state or province within the range of *C. l. nubilus* manages its wild ungulate populations to maintain sustainable populations for harvest by hunters. Each state or province monitors big game populations to adjust hunter harvest in response to changes in big game population numbers and trends. Predation is a factor that affects those numbers and trends, and is considered when setting harvest quotas. We know of no future condition that would cause a decline in ungulate populations significant enough to affect *C. l. nubilus* throughout its range.

Human population growth and land development will continue in the range of *C. l. nubilus,* including increased development and conversion of private low-density rural land to higher density urban developments, road development and transportation facilities (pipelines and energy transmission lines), resource extraction (primarily oil and gas, coal, and wind development in certain areas), and more recreationists on public lands. Despite efforts to minimize impacts to wildlife (Brown 2006, pp. 1–3), some of this development will make some areas of the subspecies' range less suitable for wolf occupancy. However, it is unlikely that these potential developments and increased human presence will affect the subspecies in the future for the following reasons: (1) Wolves are habitat generalists and one of the most adaptable large predators in the world, and became extirpated in the southern portion of the subspecies' range only because of sustained deliberate human targeted elimination (Fuller *et al.* 2003, p. 163; Boitani 2003, pp. 328–330); (2) land-use restrictions on land development are not necessary to ensure the continued conservation of the subspecies—even active wolf dens can be quite resilient to nonlethal disturbance by humans (Frame and Meier 2007, p. 316); and (3) vast areas of suitable wolf habitat and the current wolf population are secure in the subspecies' range (national parks, wilderness, roadless areas, lands managed for multiple uses, and areas protected by virtue of remoteness from human populations) and are not available for or suitable to intensive levels of land development.

Development on private land near suitable habitat will continue to expose wolves to more conflicts and higher risk of human-caused mortality. However it is likely that the rate of conflict is well within the wolf population's biological mortality threshold (generally between 17 to 48 percent ([Fuller *et al.* 2003 +/−8 percent], pp. 184–185; Adams *et al.* 2008 [29 percent], p. 22; Creel and Rotella 2010 [22 percent], p. 5; Sparkman *et al.* 2011 [25 percent], p. 5; Gude *et al.* 2011 [48 percent], pp. 113–116; Vucetich and Carroll In Review [17 percent]), especially given the large amount of secure habitat that will support a viable wolf population and will provide a reliable and constant source of dispersing wolves (Mech 1989, pp. 387–388). Wolf populations persist in many areas of the world that are far more developed than the range of *C. l. nubilus* currently is or is likely to be in the future (Boitani 2003, pp. 322–323). Habitat connectivity in the range of *C. l. nubilus* may be reduced below current levels, but wolves have exceptional abilities to disperse through unsuitable habitat (Jimenez *et al.* In review, p. 1), and such impacts would still not affect the subspecies rangewide.

Given the large number of wolves across the subspecies' range and the species' natural vagility, natural habitat connectivity is ensured over most of the range. We have not identified any occupied areas in Canada or the United States where lack of connectivity is affecting *C. l. nubilus* now or is likely to do so in the future.

The large amount of public lands and lands that are naturally inaccessible due to topography and/or remoteness from human settlement that cannot or will not be developed within the range of the subspecies assures that adequate suitable habitat for wolves will exist into the future. Even though some habitat degradation will occur in smaller areas of suitable habitat, the quantity and quality of habitat that will remain will be sufficient to maintain natural connectivity into the future (e.g., Carroll *et al.* 2006 p. 32).

Human populations in the southern portion of the subspecies' range are expected to increase (Carroll *et al.* 2006, p. 30). Increasing human populations do not necessarily lead to declining predator populations. Mortality can be limited with adequate management programs (Linnell *et al.* 2001, p. 348), research and monitoring, and outreach and education about living with wildlife. In Canada and the United States, government lands such as national parks and Crown Land provide habitat for prey species as well as wolves.

Management plans of appropriate land-management agencies and governments manage public lands to limit resource impacts from human use of those lands, and these plans are more than adequate to support a viable wolf population across the range of *C. l. nubilus.* In Canada, large expanses of remote and inaccessible habitat accomplish the same thing. Habitat suitability for wolves will change over time with human population growth, land development, activities, and attitudes, but not to the extent that it is likely to affect the subspecies rangewide.

Summary of Factor A

We do not foresee that impacts to suitable and potentially suitable habitat will occur at levels that will significantly affect wolf numbers or distribution or affect population growth and long–term viability of *C. l. nubilus.* See the recent WGL DPS delisting rule (76 FR 81688, pp. 81688–81693) for a full discussion of this factor for *C. l. nubilus.* In Canada, even higher levels of certainty of habitat availability and security are provided by large areas of relatively inaccessible land, in addition to lands with protections provided by government regulations. These large areas of wolf habitat are likely to remain suitable into the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Wolves in the western Great Lakes were delisted (76 FR 81693) based in part on the existence of well-managed programs for legal take for commercial, recreational, scientific, or educational purposes for that population. In Canada, where the vast majority of *C. l. nubilus* exist, overutilization for commercial, recreational, scientific, or educational purposes has not had a significant effect on the subspecies. Mortality rates caused by commercial, recreational, scientific, or educational purposes are not anticipated to exceed sustainable levels in the future. These activities have not affected the viability of the wolves in the past, and we have no reason to believe that they would do so in the future. In Canada, wolf populations are managed through public hunting and trapping seasons.

Scientific Research and Monitoring—Each of the states and provinces in the range of *C. l. nubilus* conduct scientific research and monitoring of wolf populations. Activities range from surveys of hunter observations of wolf locations and numbers to aerial

counting surveys to darting wolves from airplanes and fixing them with radio collars for intensive monitoring. Even the most intensive and disruptive of these activities (anesthetizing for the purpose of radio-collaring) involves a very low rate of mortality for wolves (73 FR 10542, February 27, 2008). We expect that capture-related mortality by governments, Tribes, and universities conducting wolf monitoring, nonlethal control, and research will remain below three percent of the wolves captured, and will be an insignificant source of mortality to *C. l. nubilus.*

Education—We are unaware of any wolves that have been removed from the wild solely for educational purposes in recent years. Wolves that are used for such purposes are typically privately held captive-reared offspring of wolves that were already in captivity for other reasons. However, 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 and provincial wildlife-management agencies through the requirement for state permits for protected species; and would not substantially increase human-caused wolf mortality rates.

Commercial and Recreational Uses—Wolves in Oregon and Washington are protected by state Endangered Species Acts (Washington Administrative Code (WAC) 232–12–014 and 232–12–011; Oregon Code of Regulations (ORS) 496.171 to 496.192 and 498.026). Wolves in California are currently undergoing a status review to determine whether listing is warranted under the state Endangered Species Act (California Department of Fish and Wildlife Code, Sections 2050–2085). While in candidacy status, wolves in California will be treated as a state-listed species. Wolf management plans in Oregon (ODFW 2010, entire) and Washington (Wiles *et al.* 2011, entire) establish recovery goals for each state and help protect wolves from overutilization for commercial, recreational, scientific, and educational purposes. Since their listing under the Act, no wolves have been legally killed or removed from the wild in the northwest United States (outside of the NRM DPS) for either commercial or recreational purposes. Some wolves may have been illegally killed for commercial use of the pelts and other parts, but illegal commercial trafficking in wolf pelts or parts and illegal capture of wolves for commercial breeding purposes happens rarely. We believe these state Endangered Species Acts will continue to provide a strong deterrent to illegal killing of wolves by the public in the absence of Federal protections.

Hunting and trapping occurs across the range of *C. l. nubilus* in Canada, and are managed through provincial and territorial wildlife acts whose regulations provide a framework for sustainable harvest management and monitoring (Environment Canada 2008). Harvest strategies are reviewed annually and involve regulatory controls as well as management plans. Seasons do not distinguish between subspecies of *C. lupus* and vary across jurisdictions and management unit from ''no closed season'' to ''no open season'' with an average open season of 9 to 10 months. In some provinces, harvest is also monitored by mandatory carcass checks, reporting, or questionnaires. Where local wolf populations are declining or of concern, seasons and harvest strategies may be more restrictive and bag limits or quotas may be applied (COSEWIC 2001, pp. 18–24), and where concern is low, liberal regulations typically prevail. Hunting of gray wolves is not allowed in Washington, Oregon, or California; however, lethal removal of depredating wolves has been allowed in eastern Washington and eastern Oregon (*i.e.,* in the NRM DPS) where wolves are no longer federally protected.

Wolves in British Columbia are currently designated as both a game animal and a furbearer. Seasons run from 4.5 months to 8 months long, and bag limits range between two wolves and unlimited wolves depending on location. Average annual numbers of wolves killed by hunting, trapping, and control for livestock, along with estimated percent of the population taken annually from 1986 to 1991 were 945 wolves, totaling 11 percent of the population in British Columbia (Hayes and Gunson 1995, p. 23). Estimated wolf harvest has increased to nearly 1,400 wolves in 2009 and 2010 as a result of higher wolf populations (British Columbia Ministry of Forests, Lands and Natural Resource Operations 2012, pp. 17–18).

The Northwest Territories and Nunavut manage wolves as a big game and furbearing species through hunting and trapping seasons (Nunavut 2012, pp. 1–9). Harvest numbers are known only for wolf pelts sold on the open market as pelts used domestically are not counted by the Provincial governments (COSEWIC 2001, p. 23). In the past 10 years, fur auction sales have ranged from 711 to 1,469 pelts annually from these 2 territories (COSEWIC 2001, p. 25). Although the amount to which domestic use adds to the total harvest is unknown, it is believed to be relatively insignificant (COSEWIC 2001, p. 25). The average annual number of wolves killed in the Northwest Territories and Nunavut by hunting, trapping, and control for livestock protection from 1986 to 1991 was 793 wolves, totaling 7 to 8 percent of the population (Hayes and Gunson 1995, p. 23).

Wolves are classified as big game and furbearer in Manitoba (Manitoba 2012a, entire). Hunters and trappers can take anywhere from one to unlimited wolves during a 5.5- to 12-month season (Manitoba 2012a, entire; Manitoba 2012b, entire). Most recent available data estimate the average annual number of wolves killed in Manitoba by hunting, trapping, and control for livestock protection, from 1986 to 1991 at 295 wolves, totaling 7 to 10 percent of the population (Hayes and Gunson 1995, p. 23). We have no information that there has been a significant change in harvest since this report.

Wolves are classified as small game and furbearers in Ontario. Hunting and trapping seasons last from September 15 through March 15, with a bag limit of two wolves for hunters and no bag limit for trappers (Ontario Ministry of Natural Resources 2005, pp. 21–22). Annual wolf harvest by hunters is likely in the range of 110 to 260 wolves per season and trapper harvest in Ontario averaged 337 wolves (range: 285 to 1,248) annually from the 1971–1972 season to the 2002/2003 season (Ontario Ministry of Natural Resources 2005, pp. 21–22). The combined harvest equates to approximately 6 percent (range: 4 to 17 percent) of the provincewide population of *C. lupus* in Ontario. Numbers of wolves killed for livestock protection is unknown, but Ontario Ministry of Natural Resources (2005, p. 23) estimates that the numbers are likely small.

In Quebec, wolves are classified as big game and furbearer, and seasons range from 4.5 months for trapping to 6 months for hunting (Jolicoeur and Henault 2010). Harvest rates, based on annual fur sales and population estimates, average 5.9 percent (range: 2.8 to 29.5 percent) for the entire province. Most recent available data estimate the average annual number of wolves killed in Quebec by hunting, trapping, and control for livestock protection from 1986 to 1991 at 945 wolves, totaling 11 percent of the population (Hayes and Gunson 1995, p. 23). We have no information that there has been a significant change in harvest since this report.

In Labrador, wolves are classified as furbearers and can be hunted or trapped during the 6-month season.

Approximately 100 to 350 wolves are killed by hunters annually.

Wolf populations can maintain themselves despite sustained human-caused mortality rates of 17 to 48 percent ([Fuller *et al.* 2003 +/– 8 percent], pp. 184–185; Adams *et al.* 2008 [29 percent], p. 22; Creel and Rotella 2010 [22 percent], p. 5; Sparkman *et al.* 2011 [25 percent], p. 5; Gude *et al.* 2011 [48 percent], pp. 113–116; Vucetich and Carroll In Review [17 percent]). Recent studies suggest the sustainable mortality rate may be lower, and that harvest may have a partially additive or even super additive (i.e., harvest increases total mortality beyond the effect of direct killing itself, through social disruption or the loss of dependent offspring) (Creel and Rotella 2010, p. 6), but substantial debate on this issue remains (Gude *et al.* 2012, pp. 113–116). 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. This trend is evident in this subspecies in that, despite liberal harvest imposed across the range of *C. l. nubilus* in Canada, populations are still high and trends stable to increasing.

In Canada, some wolves may have been illegally killed for commercial use of pelts and other parts, but because licenses are not required to hunt wolves in several provinces, illegal commercial trafficking in wolf pelts or parts and illegal capture of wolves for commercial breeding purposes happens rarely. We do not expect the use of wolves for scientific purposes to change in proportion to total wolf numbers. Although exact figures are not available throughout the range, such permanent removals of wolves from the wild have been very limited, and we have no substantial information suggesting that this is likely to change in the future.

In summary, states and provinces have humane and professional animal-handling protocols and trained personnel that will ensure population monitoring and research result in little unintentional mortality. Furthermore, the states' and provinces' permitting process for captive wildlife and animal care will ensure that few, if any, wolves will be removed from the wild solely for educational purposes. We conclude that any potential wolf take resulting from commercial, scientific, or educational purposes in the range of the subspecies does not appear to be affecting the viability of *C. l. nubilus.* Furthermore, states and provinces have regulatory mechanisms in place to ensure that populations remain viable (see discussion under factor D).

Factor C. Disease or Predation

This section discusses disease and parasites, natural predation, and all sources of human-caused mortality not covered under factor B above (the factor B analysis includes sources of human-caused mortality for commercial and recreational uses). The array of diseases, parasites, and predators affecting *C. l. nubilus* is similar to that affecting other wolf subspecies. The following analysis focuses on wolves in the WGL because it is the most intensively studied population of *C. l. nubilus* and is a good surrogate for assessing the rest of the subspecies' range. Although we lack direct information on disease rates and mortality rates from disease for the subspecies rangewide, it is likely that the impact of disease and predation is similar for other parts of the range; that is, disease and predation have a variety of sources, rates of disease are largely density-dependent, and disease and predation are not significantly affecting the subspecies.

A wide range of diseases and parasites have been reported for the gray wolf, and several of them have had significant but temporary impacts during the recovery of the species in the 48 contiguous United States (Brand *et al.* 1995, p. 419; Wisconsin Department of Natural Resources 1999, p. 61, Kreeger 2003, pp. 202–214). We fully anticipate that, in the range of *C. l. nubilus,* these diseases and parasites will follow the same pattern seen in other members of the genus in North America (Brand *et al.* 1995, pp. 428–429; Bailey *et al.* 1995, p. 445; Kreeger 2003, pp. 202–204; Atkinson 2006, pp. 1–7; Smith and Almberg 2007, pp. 17–19; Johnson 1995a, b). Although destructive to individuals, most of these diseases seldom cause significant, long-term changes in population growth (Fuller *et al.* 2003, pp. 176–178; Kreeger 2003, pp. 202–214).

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 (primarily pup mortality) is a result of dehydration, electrolyte imbalances, and shock. Canine parvovirus 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. Nearly 100 percent of the wolves handled in Montana (Atkinson 2006), Yellowstone National Park (Smith and Almberg 2007, p. 18), and Minnesota (Mech and Goyal 1993, pp. 331) had blood antibodies indicating nonlethal exposure to CPV. 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 that CPV reduced pup survival, subsequent dispersal, and the overall rate of population growth in Minnesota (a population near carrying capacity in suitable habitat). After the CPV became endemic in the population, the population developed immunity and was able to withstand severe effects from the disease (Mech and Goyal, 1993, pp. 331–332). These observed effects are consistent with results from studies in smaller, isolated populations in Wisconsin and on Isle Royale, Michigan (Wydeven *et al.* 1995, entire; Peterson *et al.* 1998, entire) but indicate that CPV also had only a temporary population effect in a larger population.

Canine distemper virus (CDV) is an acute disease of carnivores that has been known in Europe since the sixteenth century and infects dogs worldwide (Kreeger 2003, p. 209). This disease 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). Mortality from CDV 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 2003, p. 20)). Carbyn (1982, pp. 113–116) concluded that CDV was partially responsible for a 50-percent decline in 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 wolf populations—29 percent in northern Wisconsin and 79 percent in central Wisconsin from 2002 to 2003 (Wydeven and Wiedenhoeft 2003, pp. 23–24, Table 7) and 2004 (Wydeven and Wiedenhoeft 2004, pp. 23–24, Table 7), and similar levels in Yellowstone National Park (Smith and Almberg 2007, p. 18). 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). These outbreaks will undoubtedly occur when wolf densities are high and near carrying capacity, but as documented elsewhere, CDV will not likely significantly affect *C. l. nubilus.*

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. Lyme disease infections in wolves have been reported only in the WGL. In this region, the disease 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 and is not expected to be a factor affecting *C. l. nubilus* rangewide (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, 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 wolves throughout North America (Brand *et al.* 1995, pp. 427–428; Kreeger 2003, pp. 207–208). In Montana and Wyoming, proportions of packs with mange fluctuated between 3 and 24 percent from 2003 to 2008 (Jimenez *et al.* 2010; Atkinson 2006, p. 5; Smith and Almberg 2007, p. 19). In packs with the most severe infestations, pup survival appeared low, and some adults died (Jimenez *et al.* 2010); however, evidence suggests infestations do not normally become chronic because wolves often naturally overcome them. Mange has been detected in Wisconsin wolves every year since 1991, with no impact on population growth (Wydeven *et al.* 2009, pp. 96–97). Despite its constant presence as an occasional mortality factor, the wolf population expanded from 39 to 41 wolves in 1991 to its present level of 815 or more in winter 2011 to 2012 (Wydeven *et al.* 2012).

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 on two wolves in Montana in 2005, on a wolf in south-central Idaho in early 2006 (Service *et al.* 2006, p. 15; Atkinson 2006, p. 5; Jimenez *et al.* 2010), and in 4 percent of Minnesota wolves in 2003 through 2005 (Paul *in litt.* 2005), but their infestations were not severe. Dog-biting-lice infestations are not expected to have a significant impact even at a local scale in *C. l. nubilus.*

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 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 1995b, pp. 431, 436–438; Mech and Kurtz 1999, pp. 305–306; Thomas *in litt.* 1998, Thomas *in litt.* 2006, Wisconsin Department of Natural Resources 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.

Natural Predation

No wild animals habitually prey on wolves. Other predators, such as mountain lions (*Felis concolor*), black bears (*Ursus Americanus*), and grizzly bears (*Ursus arctos horribilis*) (Service 2005, p. 3), or even large prey, such as deer, elk, and moose (Mech and Nelson 1989, pp. 676; Smith *et al.* 2001, p. 3), occasionally kill wolves, but this has been documented only rarely. Other wolves are the largest cause of natural predation among wolves (less than three percent rate of natural wolf mortality in the NRM). Intraspecific-strife mortality is normal behavior in healthy wolf populations and is an expected outcome of dispersal conflicts and territorial defense. This form of mortality is something with which the species has evolved, and it should not affect *C. l. nubilus.*

Human-Caused Mortality

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 their historical range in the United States (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, 345–347). Occasionally, wolves are killed accidentally (*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).

However, many wolf killings are intentional, illegal, and never reported to authorities. Wolves may become unwary of people or human activity, increasing their vulnerability to human-caused mortality (Mech and Boitani 2003, pp. 300–302). The number of illegal killings is difficult to estimate and impossible to accurately determine because they generally occur with few witnesses. Illegal killing was estimated to make up 70 percent of the total mortality rate in a north-central Minnesota wolf population and 24 percent in the NRM (Liberg *et al.* 2011, pp. 3–5). Liberg *et al.* (2011, pp. 3–5) suggests more than two-thirds of total poaching may go unaccounted for, and that illegal killing can pose a severe threat to wolf recovery. In the NRM, poaching has not prevented population recovery, but it has affected wolf distribution (Bangs *et al.* 2004, p. 93) preventing successful pack establishment and persistence in open

prairie or high desert habitats (Bangs *et al.* 1998, p. 788; Service *et al.* 1989–2005). We would expect a similar pattern for *C. l. nubilus* in the northwestern United States, but not in Canada, where harvest regulations are liberal and social tolerance of wolves is higher.

Vehicle collisions contribute to wolf mortality rates throughout North America. They are expected to rise with increasing wolf populations, and as wolves colonize areas with more human development and a denser network of roads and vehicle traffic. Highway mortalities will likely constitute a small proportion of total mortalities.

Populations of *C. l. nubilus* are high and stable to increasing in the many areas throughout Canada. We have no reason to believe that threats of disease and predation have increased recently or will increase. Therefore, we conclude that neither disease nor predation, including all forms of human–caused mortality, is significantly affecting *C. l. nubilus* throughout its range.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to those existing and foreseeable threats discussed under the other factors that may affect *C. l. nubilus.* Wolves within the WGL DPS were delisted based in part on the fact that there would be adequate regulatory mechanisms in place following delisting to facilitate the maintenance of the recovered status of the wolves in the western Great Lakes. For a full discussion of the regulatory mechanisms in place for gray wolves in the western Great Lakes, see the December 28, 2011, final delisting rule (76 FR 81666, pp. 81701–81717).

Wolves are classified as endangered under both the Washington and Oregon State Endangered Species Acts (WAC 232–12–014 and 232–12–011; ORS 496.171 to 496.192 and 498.026). Unlawful taking (when a person hunts, fishes, possesses, maliciously harasses or kills endangered fish or wildlife, and the taking has not been authorized by rule of the commission) of endangered fish or wildlife is prohibited in Washington (RCW 77.15.120). Prohibitions and limitations regarding endangered species in Oregon are established by the Oregon Fish and Wildlife Commission to ensure the survival of the species and may include take avoidance (''to kill or obtain possession or control of any wildlife,'' ORS 496.004) and protecting resource sites (ORS 496.182). Wolves in California are currently undergoing a status review to determine whether listing is warranted under the California Endangered Species Act (California Department of Fish and Wildlife Code 2050–2069).

Oregon and Washington also have adopted wolf-management plans (California is currently developing a wolf-management plan) intended to provide for the conservation and reestablishment of wolves in these states (ODFW 2010, entire; Wiles *et al.* 2011, entire). These plans include population objectives, education and public outreach goals, damage-management strategies, and monitoring and research plans. Wolves will remain on each state's respective endangered species list until the population objectives (four breeding pairs for 3 consecutive years in Oregon and four breeding pairs for 3 consecutive years in each of three geographic regions plus three breeding pairs anywhere in Washington) have been reached. Once the objectives are met, wolves will be either reclassified to threatened or removed from the state's endangered species lists. Once removed, the states will use regulated harvest to manage wolf populations. Wolves in the western two thirds of Oregon will maintain protected status until four breeding pairs occupy that region for 3 consecutive years.

Both plans also recognize that management of livestock conflicts is a necessary component of wolf management (Service 1980, p. 4; Service 1987, p. 3; Hayes and Gunson 2005, p. 27). Control options are currently limited within *C. l. nubilus'* historical range in Oregon and Washington, where they are federally protected. If Federal delisting occurs, guidelines outlined in each state's plan define conditions under which depredating wolves can be harassed or killed by agency officials (ODFW 2010, pp. 43–54; Wiles *et al.* 2011, pp. 72–94).

Within the range of *C. l. nubilus* in Canada, wolf populations are managed as big game and as furbearers; hunting and trapping are the principal management tools used to keep populations within the limits of human tolerance. Each province within the range has committed to maintain sustainable populations while allowing for harvest and minimizing conflict with livestock (COSEWIC 2001, pp. 18–29, 44–46). Maintaining wild ungulate populations in numbers that allow for liberal human harvest for local consumption is also a priority in many areas (COSEWIC 2001, pp. 18–26).

Although wolves are not dependent on specific habitat features other than an adequate food supply and human tolerance, state, provincial, and Federal land-management regimes provide protection for wolves and wolf habitat throughout the range of *C. l. nubilus.* Canadian National Parks in the southern portion of the range of *C. l. nubilus* do not allow hunting, while National Parks in the northern portion of the range allow hunting by Native Peoples only (COSEWIC 2001, p. 26). National Parks and Monuments also exist in Washington (three National Parks and three National Monuments) totaling 7,707 km^2 (1,904,451 million acres) and Oregon (one National Park and two National Monuments) totaling 800 km^2 (197,656 acres); some of these areas will likely act as refugia once recolonized by wolves. These land-management regimes provide refugia for wolf populations from hunting, trapping, and control activities, and in turn these protected populations may serve as a source of dispersing wolves for low-density populations.

We have long recognized that control of wolf numbers and especially depredating wolves was central to maintaining public support for wolf conservation. Much of the impact of livestock production on *C. l. nubilus* occurred during the period between settlement and the mid-20th century when wolves were extirpated from most of the United States due to depredations on livestock. Wolves have not repopulated these regions due to continued lack of human tolerance to their presence and habitat alteration. In Canada, outside of relatively high-human-density areas, wolf populations have remained strong since the cessation of widespread predator poisoning campaigns in the 1950s. We have no information to suggest that the current regulatory regime in Canada is not adequate to provide for the conservation of *C. l. nubilus,* and so we conclude that the jurisdictions in these areas have been successful in their search for an appropriate balance between wolf conservation, human tolerance, and providing for human uses. Therefore, both in Canada, and in the United States, in the absence of the Act, the existing regulatory mechanisms are currently adequate to provide for the long-term conservation of *C. l. nubilus.*

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Wolves in the western Great Lakes were delisted based in part on the conclusion that other natural or manmade factors are unlikely to affect the viability of wolves in the western Great Lakes in the future. For a full discussion of factor E for *C. lupus nubilus* in the Western Great Lakes DPS,

see the December 28, 2011, final delisting rule (76 FR 81666, pp. 81717–81721).

Public Attitudes Toward the Gray Wolf—Throughout much of Canada, in contrast to the contiguous United States, wolves are not dependent on human tolerance for their conservation. Even during the height of wolf control that included indiscriminate poisoning and trapping campaigns by the public and by government agencies, wolves were able to maintain viable populations in much of *C. l. nubilus'* historical range simply by virtue of remote and rugged terrain and low human population densities. However, in southern Canada and in the United States today public attitudes toward wolves are important conservation issues. In these areas with higher human densities and the presence of livestock, the primary determinant of the long-term conservation of gray wolves will likely be human attitudes toward this large predator. 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, killing of wolves by humans, and the wolf-related traditions of Native American Tribes or local culture.

It is important to find a balance in wolf management that will sustain wolf populations but also address other human concerns in a way that maintains tolerance of wolves among the human populations that live with them (Bangs *et al.* 2009, p. 111; 62 FR 15175, April 2, 2009). Addressing these concerns will often involve lethal take of wolves or other removal methods (Bangs *et al.* 2009, pp. 107–111. These activities, when employed in an overall management framework, are essential wolf-conservation activities as they provide the public with assurances that human interests and needs will be considered appropriately during wolf-management decisions (Bangs *et al.* 2009, pp. 111–114.

Predator control—Wolf numbers have been the subject of control efforts to reduce conflicts with livestock and to increase ungulate numbers in Canada since the turn of the 20th century (Boertje *et al.* 2010, p. 917). Since the 1970s, wolf control has been focused on increasing populations of wild ungulates, mostly moose but also caribou, for human consumption and in some cases to conserve caribou herds that were at risk (Russell 2010, pp. 6–12). Wolf control has included both lethal and nonlethal methods, using public hunting and trapping seasons, aerial gunning by government agents, and experimentation with predator exclosures, sterilization, and supplemental feeding (Russell 2010, pp. 6–12).

Predator-control programs as they currently exist are not affecting the viability of *C. l. nubilus* for several reasons: (1) The types of control measures that have resulted in effective extirpation of wolf populations from large areas are no longer permitted or prescribed by the states and provinces that pursue wolf control. Historically, wolves were persecuted by people seeking to eliminate wolves from the landscape using any means necessary. These means included government agencies systematically poisoning and trapping wolves. The goal of wolf-control programs and associated research in Canada today is to maintain sustainable (though low-density) wolf populations. Control programs do not employ indiscriminant broadcast poisoning, and trapping or shooting of wolves is limited by estimates of population numbers with the goal of reducing but not eliminating wolf populations.

(2) Wolf control is very expensive and so is not likely to be applied broadly enough and consistently enough to reduce the rangewide population of *C. l. nubilus* substantially. Typically, wolf-control areas are repopulated within 4 years of cessation of control efforts, indicating that population control is temporary and reliant on constant application of control efforts (Boertje *et al.* 2010, p. 920).

(3) Wolf control must be applied over a large area to be effective (National Research Council 1997, p. 10). This fact combined with number 2 above ensures that wolf control is not likely to be applied unless wolf populations are high enough for the perceived benefits to outweigh the costs. This situation is not likely to exist over a large portion of the subspecies' range simultaneously.

(4) Wolves are extremely resilient with high population-growth potential and high rates of dispersal. After control operations, wolf populations recover to precontrol levels within a few years.

(5) Wolf control will be applied only where wolf populations are high. This means that wolf control may act as a density-dependent population-control mechanism. When wolf populations are high, ungulate populations become depressed, leading to pressures for management authorities to employ predator control actions to address the situation. As predator populations are reduced and ungulate populations rebound, pressure to continue the control actions is reduced, leading to reduction or cessation of the program to reduce expenditures. This dynamic likely supplies some added protection to the long-term viability of the subspecies.

Climate Change—Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Throughout their circumpolar distribution, gray wolves persist in a variety of ecosystems with temperatures ranging from −70 °F to 120 °F (−57 °C to 49 °C) with wide-ranging prey type and availability (Mech and Boitani 2003, p. xv). *C. l. nubilus* are historically and currently known to inhabit a range of ecotypes subsisting on large ungulate prey as well as small mammals. Due to this plasticity, we do not consider *C. l. nubilus* to be vulnerable to climate change. Similarly, elk, the primary prey in many areas, are known to be habitat generalists due to their association with wide variation in environmental conditions (Kuck 1999, p. 1). We recognize that climate change may have detectable impacts on the ecosystems that affect *C. l. nubilus.* For example, to the degree that warmer temperatures and decreased water availability limit prey abundance, we would also expect decreased wolf densities. However, we do not consider these potential impacts of climate change to be affecting *C. l. nubilus* now or to likely do so in the future. For a full discussion of potential

impacts of climate change on wolves, please see our recent final delisting rule for the gray wolf in Wyoming (77 FR 55597–55598, September 10, 2012).

Summary of Factor E

Natural or manmade factors are not affecting the viability of *C. l. nubilus*. Positive public attitudes continue to be fostered through management of conflicts and hunting and trapping opportunities and their associated economic benefits. Wolf control to increase ungulate numbers is pursued in local areas but is not likely to significantly affect the subspecies. In addition, control actions are not aimed at extirpation of wolf populations, but instead seek to reduce overall density of wolves while maintaining viable populations.

Cumulative Effects

A species may be affected by more than one factor in combination. Within the preceding review of the five listing factors, we discussed potential factors that may have interrelated impacts on *C. l. nubilus.* Our analysis did not find any significant effects to *C. l. nubilus.* However, we recognize that multiple sources of mortality acting in combination have greater potential to affect wolves than each source alone. Thus, we consider how the combination of factors may affect *C. l. nubilus. Canis lupus nubilus* occurs as widespread, large, and resilient populations across much of its historical geographic range and in recent years has expanded in distribution. Given the current size of the *C. l. nubilus* population in Canada and the lack of identified threats, we do not find any combination of factors to be a significant threat.

Isolation of *C. l. nubilus* in the Pacific Northwest, including western British Columbia and western Washington, from the larger population of *C. l. nubilus* in central and eastern Canada, in combination with small population size, could exacerbate the potential for other factors to disproportionately affect that population. While the current population estimate is large (2,200 wolves), increased mortality (resulting from hunting, vehicle collisions, poaching, natural sources of mortality) could reduce the population to a level where effects of small population size take effect. Small population size directly and significantly increases the likelihood of inbreeding depression, which may decrease individual fitness, hinder population growth, and increase the population's extinction risk. Small population size also increases the likelihood that concurrent mortalities from multiple causes that individually may not be resulting in a population decline (e.g., vehicle collisions, natural sources of mortality) could collectively do so. Combined effects from disease, catastrophe, or hybridization events that normally could be sustained by a larger, resilient population have the potential to affect the size, growth rate, and genetic integrity of a smaller *C. l. nubilus* population. The combined effects of genetic and environmental events to a small population could represent a significant effect. However, given the current size of the *C. l. nubilus* population in Canada, we do not find the combination of factors to be significant at this time.

Conclusion

As required by the Act, we considered the five factors in assessing whether the subspecies *C. l. nubilus* is threatened or endangered throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the subspecies. We reviewed the information available in our files, other available published and unpublished information, and we consulted with recognized experts and other Federal, state, and tribal agencies. We found that wolves occupying *C. l. nubilus'* historical range are widespread and exist as large, stable populations, with no evidence of decline over the last 10 years despite liberal harvest. During this process we did not identify any threats to the subspecies, indicating that *C. l. nubilus* is not in danger of extinction throughout its range and does not, therefore, meet the definition of an endangered species. It is also not likely to become endangered within the foreseeable future throughout all of its range.

C. l. nubilus was extirpated from the central United States, the Southern Rocky Mountains and Colorado Plateau, and the Pacific Northwestern United States by the 1930s and, with the exception of the Pacific Northwest, which is actively being recolonized by *C. l. nubilus* and *C. l. occidentalis,* has not re-established populations in these areas. It is likely that land uses associated with agriculture and livestock make the majority of these areas unsuitable for wolf occupation in the future. Past range contraction can be evidence of threats that may still be acting on the species, and is therefore relevant in considering the status of the species in its remaining range. Thus, we considered whether the extirpation of *C. l. nubilus* from these areas suggests that the remaining range may likewise be subject to the threats that caused the past range contraction such that substantial additional range contraction is likely. We determined that it is not. The past range contraction was caused largely by conflict with man resulting from the introduction of intensive livestock growing and agriculture in suitable areas concurrent with European expansion across the continent; as discussed above most of the remaining range of *C. l. nubilus* is not suitable for conversion to intensive livestock growing and agriculture, nor has there been significant expansion of those activities or human population growth into occupied wolf habitat for many decades. This conclusion is consistent with the observed pattern of *C. l. nubilus* range over time: The contraction occurred as intensive human use of the land expanded; both that expansion and *C. l. nubilus* range contraction halted many decades ago; and *C. l. nubilus* range is now stable or expanding. This strongly supports the conclusion that the factors that were responsible for the *C. l. nubilus'* range contraction will not cause further range contraction, and will not result in the subspecies becoming endangered in the foreseeable future. See the Significant Portion of the Range Analysis section below for our evaluation as to whether this subspecies may or may not be in danger of extinction in a significant portion of its range.

Does the North American subspecies C. l. occidentalis *warrant the protections of the Act?*

C. l. occidentalis—Historical Distribution

The historical range of *C. l. occidentalis* includes all of Alaska except for the southeastern Coast, interior western Canada, and the northern Rocky Mountains of the contiguous United States. *C. l. occidentalis* range is bordered on the east and west by the subspecies *C. l. nubilus,* and on the northeast by *C. l. arctos* (Nowak 1995, Fig. 20).

C. l. occidentalis Current Distribution

For purposes of this status review we will discuss the current distribution of *C. l. occidentalis* by state, province, or region in which it is found. Across the range of the subspecies, management is carried out by individual states and provinces—complicating the discussion of status by biological population. No state or province in the range of *C. l. occidentalis* monitors wolf populations to the extent that precise estimates of population size can be made. For this reason, population estimates should be regarded as estimates using professional judgment of the agencies involved.

Contiguous United States—The historical range of *C. l. occidentalis* in the contiguous United States included the northern Rocky Mountains and surrounding areas (delisted due to recovery 76 FR 25590, May 5, 2011). Recent expansion of populations of this subspecies in this region in response to recovery actions has resulted in a large recovered population and the recent delisting of gray wolves in the northern Rocky Mountains (76 FR 25590, May 5, 2011, and 77 FR 55530, September 10, 2012) recovered population. Currently there are only a few members of *C. l. occidentalis* known in the contiguous United States outside of the delisted areas; these wolves are in the Pacific Northwest. The first account of breeding by wolves (the Lookout pack) in Washington State since the 1930s was documented in the North Cascades (outside of the delisted area) in 2008. Preliminary genetic testing of the breeding male and female suggested they were descended from wolves occurring in (1) coastal British Columbia (*C. l. nubilus*) and (2) northeastern British Columbia (*C. l. occidentalis*), northwestern Alberta (*C. l. occidentalis*), or the reintroduced populations in central Idaho and the greater Yellowstone area (*C. l. occidentalis*) (Pollinger 2008, pers. comm.; Nowak 1995, p. 397). In the spring of 2011, a new pack was documented, and genetic testing of a pack member confirmed that this individual was a gray wolf that was closely related to (consistent with being an offspring of) the Lookout pack breeding pair (Robinson *et al.* 2011, *in litt.,* pp. 1–2).

Alaska—Alaska has a robust population of *C. l. occidentalis* found over most of its historical range at densities that are strongly correlated with variations in ungulate biomass (Orians *et al.* 1997, p. 3). Alaska's wolf population is estimated by Alaska Department of Fish and Game (ADFG) to be 7,000 to 11,000 (ADFG 2007, p. 8). A small number of *C. l. nubilus* also occur in southeastern Alaska.

C. l. occidentalis in Canada

The COSEWIC published an assessment and status report on *C. lupus* in 2001 (COSEWIC 2001, entire). The assessment evaluates the status and protection level of wolves across jurisdictions for *C. l. nubilus, C. l. occidentalis, C. l. lycaon,* and *C. l. arctos*. The subspecific ranges described are not entirely consistent with those used for this status review (*C. l. occidentalis* range described by COSEWIC included Manitoba, Ontario, Quebec and Newfoundland-Labrador, which the Service considers part of *C. l. nubilus* range). This discrepancy, however, is inconsequential as COSEWIC found that both *C. l. nubilus* and *C. l. occidentalis* are ''Not at Risk'' based on widespread, large, stable populations, with no evidence of decline over the last 10 years despite liberal harvest (COSEWIC 2001, p. ii). For the purposes of this analysis, where the COSEWIC report differs from Nowak (1995, Fig. 20) in interpretation of subspecies boundaries, we have used Provincial population estimates to infer subspecies numbers.

Furthermore, Environment Canada published a Non-Detriment Finding for the export of legally harvested *C. lupus* in Canada in 2008 (Environment Canada 2008, entire). Supporting information analyzed in this finding included biological characteristics, current status, harvest management, control of harvest, harvest trend, harvest monitoring, benefits of harvest, and protection from harvest. The finding describes stable to increasing populations, a lack of threats, and high confidence in the current Canadian harvest-management system. Most jurisdictions operate under an adaptive-management strategy, which imposes strict control of harvest and is reactive to changing conditions, with the aim of ensuring sustainable harvest and maintaining biodiversity.

Yukon Territories—An estimated 4,500 wolves inhabited the Yukon in 2001 (COSEWIC 2001, p. 22). Wolves are managed as big game and as furbearers with bag limits set for residents and nonresidents.

Northwest Territories and Nunavut—An estimated 10,000 wolves existed in the Northwest Territories and Nunavut in 2001 (COSEWIC 2001, p. 22); these wolves compose three subspecies: *C. l. occidentalis, C. l. nubilus,* and *C. l. arctos*. The distribution of the three subspecies is known only in a general sense, and the boundaries between subspecies are not discrete. In general, *C. l. arctos* inhabits the Arctic Islands of Nunavut, *C. l. nubilus* inhabits most of the mainland portion of Nunavut, and *C. l. occidentalis* inhabits all of Northwest Territories and the western edge of mainland Nunavut (Nowak 1995, Fig. 20). The COSEWIC report does not differentiate between *C. l. occidentalis* and *C. l. arctos;* however, many of the estimated numbers were likely to be *C. l. occidentalis* due to their geographic range, including most of mainland Northwest Territories and a portion of mainland Nunavut.

British Columbia—Two gray wolf subspecies are present in British Columbia: *C. l. occidentalis* and *C. l. nubilus. C. l. nubilus* inhabits coastal areas including some coastal islands. *C. l. occidentalis* is widely distributed on the inland portion of the province. Generally, government agencies do not distinguish between subspecies when reporting take or estimating population sizes. Therefore, determining exactly what portion of reported numbers for British Columbia are *C. l. nubilus* and which are *C. l. occidentalis* is not possible. Where possible, we have separated accounts of wolves in coastal areas from those inland, but our ability to do this is limited by the lack of subspecific reporting. An estimated 8,000 wolves were present in British Columbia in 1997 (COSEWIC 2001, p. 22). The COSEWIC report estimates that 2,200 wolves were in the ''Pacific'' region of British Columbia in 1999, and this estimate likely refers to *C. l. nubilus,* leaving the remaining 5,800 wolves in British Columbia referable to *C. l. occidenalis* (COSEWIC 2001, Table 7).

Alberta—*C. l. occidentalis* range across Alberta with the exception of the prairie area in the southeastern portion of the province where wolves were extirpated in the early 1900s (COSEWIC 2001, p. 13). An estimated 5,000 wolves were present in 1997.

Saskatchewan—*C. l. occidentalis* range across Saskatchewan outside of prairie areas where wolves were extirpated in the early 1900s (COSEWIC 2001, p. 13). In 1997 an estimated 2,200 to 4,300 wolves inhabited the province, with an average harvest of 238 per year (COSEWIC 2001, p. 21).

Manitoba—*C. l. occidentalis* inhabits western and southern Manitoba and shares an intergradation zone with *C. l. nubilus* in the north-central portion of the province (Chambers *et al.* 2012, Fig. 13). Provincial records and accounts generally do not distinguish between these subspecies, so it is impossible to determine which subspecies is being referred to in government documents. An estimated 4,000 to 6,000 wolves of either subspecies existed in Manitoba in 1997, and average harvest was 366 (COSEWIC 2001, p. 21).

Summary of Information Pertaining to the Five Factors

Gray wolves were recently delisted due to recovery in a portion of the range of *C. l. occidentalis* in the contiguous United States (76 FR 25590, May 5, 2011; 77 FR 55530, September 10, 2012). Therefore this analysis focuses on assessing threats to wolves in the remaining portion of the subspecies' range. Within the likely historical range of *C. l. occidentalis* in the Great Plains portion of southern Canada and northern United States, wolves were extirpated soon after colonization and

establishment of European-style agriculture and livestock growing. This range contraction appears to be permanent and is relatively small compared to the historical and current range of the subspecies, and the range does not appear to be contracting further at this time. The analysis of the Five Factors below does not consider the potential for effects to *C. l. occidentalis* in this area where the species has been extirpated, rather effects are considered in the context of the present population. We do not consider historical range contraction, by itself, to represent a threat to the species, but loss of historical range is reflected in the current status of the species. Threat factors are always evaluated in the context of the current species status, therefore in some cases, historical range contraction can affect the outcome of the Five Factor analysis.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Canis lupus occidentalis ranges over portions of 13 states and provinces in the western United States and western Canada. This area represents nearly all of the subspecies' historical range (Chambers *et al.* 2012) with the exception of prairie areas and large intermountain valleys in the southern and eastern portion of the range where conflicts with livestock preclude wolf presence. Within this area, wolves maintain robust populations in virtually all areas where wild ungulate populations are high enough to support wolves and where human and livestock presence are low enough to tolerate wolf populations. The areas that wolves occupy correspond to ''suitable'' wolf habitat as modeled by Oakleaf *et al.* (2006, entire) and Carroll *et al.* (2006 entire). Although these models analyzed only habitat in the contiguous United States, the principles of suitable wolf habitat in Canada and Alaska are similar; that is, wolves persist where ungulate populations are adequate to support them and conflict with humans and their livestock is low. The areas considered ''unsuitable'' in these models are not occupied by wolves due to human and livestock presence and the associated lack of tolerance of wolves and livestock depredations. See our April 2, 2009, Northern Rocky Mountains DPS final delisting rule for more information on wolf suitable-habitat models (74 FR 15123, pp. 15157–15159). In that document we concluded that the most important habitat attributes for wolf pack persistence are forest cover, public land, high ungulate (elk) density, and low livestock density. The area depicted in Oakleaf *et al.* (2006, Fig. 2) illustrates where suitable wolf habitat occurs in the southern portion of *C. l. occidentalis* distribution. In this area, habitat is generally suitable in the large, forested public-land complexes in Idaho, Montana, and Wyoming and unsuitable in prairie habitats where forest cover is lacking, human density and use is high, and livestock are present year-round. We conclude that similar areas in adjacent Canada are also unsuitable for wolf colonization and occupation for the same reasons.

Wolves referable to *C. l. occidentalis* currently occupy nearly the entire historical range of the species; the only exceptions are areas that have been modified for human use such as prairies and some valley bottoms. We believe that enough suitable habitat exists in the currently occupied area to continue to support wolves into the future. Wolf populations will likely remain viable in these areas, and management activities will continue to focus on wolf population reduction in many areas to maintain populations of wild ungulates and reduce conflicts. We do not anticipate overall habitat changes in the subspecies' range to occur at a magnitude that would pose a threat to the subspecies because wolf populations are distributed across the current range, populations are stable, and are able to withstand high levels of mortality due to their high reproductive rate and vagility. Much of the subspecies' southern range (*i.e.,* within the contiguous United States) is in public ownership where wolf conservation is a priority and management plans have been adopted to ensure continued wolf persistence (74 FR 15123, pp. 15159–15160; 77 FR 55530, pp. 55576–55577). Areas in Canada and Alaska within the subspecies' range include large areas with little human and livestock presence where there are no threats to wolf persistence.

Other Components of Wolf Habitat—Another important factor in maintaining wolf populations is the native ungulate population. Primary sources of wild ungulate prey within the range of *C. l. occidentalis* include elk, white-tailed deer, mule deer, moose, bison, and caribou. Bighorn sheep, dall sheep, mountain goats, and pronghorn also are common but not important as wolf prey. Each state or province within the range of *C. l. occidentalis* manages its wild ungulate populations to maintain sustainable populations for harvest by hunters. Each state or province monitors big game populations to adjust hunter harvest in response to changes in big-game population numbers and trends. Predation is a factor that affects those numbers and trends and is considered when setting harvest quotas. We know of no future condition that would cause a decline in ungulate populations significant enough to affect *C. l. occidentalis* rangewide.

Human population growth and land development will continue in the range of *C. l. occidentalis,* including increased development and conversion of private low-density rural land to higher density urban developments, road development and transportation facilities (pipelines and energy transmission lines), resource extraction (primarily oil and gas, coal, and wind development in certain areas), and more recreationists on public lands. Despite efforts to minimize impacts to wildlife (Brown 2006, pp. 1–3), some of this development will make some areas of the subspecies' range less suitable for wolf occupancy. However, these potential developments and increased human presence are unlikely to affect the subspecies in the future for the following reasons: (1) Wolves are habitat generalists and one of the most adaptable large predators in the world, and only became extirpated in the southern portion of the subspecies' range because of sustained deliberate human targeted elimination (Fuller *et al.* 2003, p. 163; Boitani 2003, pp. 328–330); (2) land-use restrictions on human development are not necessary to ensure the continued conservation of the subspecies—even active wolf dens can be quite resilient to nonlethal disturbance by humans (Frame *et al.* 2007, p. 316); and (3) vast areas of suitable wolf habitat and the current wolf population are secure in the subspecies' range (national parks, wilderness, roadless areas, lands managed for multiple uses, and areas protected by virtue of remoteness from human populations) and are not available for or suitable to intensive levels of human development.

Development on private land near suitable habitat will continue to expose wolves to more conflicts and higher risk of human-caused mortality. However it is likely that the rate of conflict is well within the wolf population's biological mortality threshold (generally from 17 to 48 percent ([Fuller *et al.* 2003 +/− 8 percent], pp. 184–185; Adams *et al.* 2008 [29 percent], p. 22; Creel and Rotella 2010 [22 percent], p. 5; Sparkman *et al.* 2011 [25 percent], p. 5; Gude *et al.* 2011 [48 percent], pp. 113–116; Vucetich and Carroll In Review [17 percent]), especially given the large amount of secure habitat that will support a viable wolf population and will provide a reliable and constant source of dispersing wolves (Mech 1989,

pp. 387–388). Wolf populations persist in many areas of the world that are far more developed than the range of *C. l. occidentalis* currently is or is likely to be in the future (Boitani 2003, pp. 322–323). Habitat connectivity in the range of *C. l. occidentalis* may be reduced below current levels, but wolves have exceptional abilities to disperse through unsuitable habitat (Jimenez *et al.* In review, p. 1) and such impacts would still not have a significant effect on the subspecies.

Given the large number of wolves across the subspecies' range and the species' natural vagility, natural habitat connectivity is ensured over most of the range. We have not identified any occupied areas in Canada or the United States where lack of connectivity is affecting *C. l. occidentalis* now or is likely to do so in the future.

The large amount of public lands and lands that are naturally inaccessible due to topography and/or remoteness from human settlement that cannot or will not be developed within the range of the subspecies assures that adequate suitable habitat for wolves will exist into the future. Even though some habitat degradation will occur in smaller areas of suitable habitat, the quantity and quality of habitat that will remain will be sufficient to maintain natural connectivity (e.g., Carroll *et al.* 2006 p. 32).

Human populations in the southern portion of the subspecies' range are expected to increase (Carroll *et al.* 2006, p. 30). Increasing human populations do not necessarily lead to declining predator populations. Mortality can be limited with adequate management programs (Linnell *et al.* 2001, p. 348), research and monitoring, and outreach and education about living with wildlife. In Canada and the United States, government lands such as national parks and Crown Land provide habitat for prey species as well as wolves.

Management plans of appropriate land-management agencies and governments manage public lands to limit resource impacts from human use of those lands, and these plans are more than adequate to support a viable wolf population across the range of *C. l. occidentalis.* In Canada and Alaska, large expanses of remote and inaccessible habitat accomplish the same thing. Habitat suitability for wolves will change over time with human development, activities, and attitudes, but not to the extent that it is likely to affect the subspecies rangewide.

Summary of Factor A

We do not foresee that impacts to suitable and potentially suitable habitat will occur at levels that will significantly affect wolf numbers or distribution or affect population growth and long-term viability of *C. l. occidentalis.* See the NRM DPS delisting rule (74 FR 15123, April 2, 2009) for a full discussion of this factor for the contiguous United States. In Canada and Alaska, even higher levels of certainty of habitat availability and security are provided by large areas of relatively inaccessible land, in addition to lands with protections provided by government regulations. These large areas of suitable wolf habitat will remain suitable into the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Wolves within the NRM DPS were delisted based in part on the existence of well-managed programs for legal take for commercial, recreational, scientific, or educational purposes for that population. For a full discussion of the management of wolves in the NRM DPS, see the final delisting rules (74 FR 15123, April 2, 2009 and 77 FR 55530, September 10, 2012). In Canada and Alaska overutilization for commercial, recreational, scientific, or educational purposes has not had a significant effect on *C. l. occidentalis.* We do not anticipate that mortality rates caused by commercial, recreational, scientific, or educational purposes will exceed sustainable levels in the future. These activities have not affected the viability of the wolves in the past, and we have no reason to believe that they would do so in the future. In Canada and Alaska wolves are managed for harvest by recreational hunters and trappers.

Scientific Research and Monitoring—Each of the states and provinces in the range of *C. l. occidentalis* conducts scientific research and monitoring of wolf populations. Activities range from surveys of hunter observations of wolf locations and numbers to aerial counting surveys to darting wolves from airplanes and fixing them with radio collars for intensive monitoring. Even the most intensive and disruptive of these activities (anesthetizing for radio telemetry) involves a very low rate of mortality for wolves (73 FR 10542, February 27, 2008). We expect that capture-caused mortality by governments, Tribes, and universities conducting wolf monitoring, nonlethal control, and research will remain below three percent of the wolves captured, and will be an insignificant source of mortality to *C. l. occidentalis.*

Education—We are unaware of any wolves that have been removed from the wild solely for educational purposes in recent years. Wolves that are used for such purposes are typically privately held captive-reared offspring of wolves that were already in captivity for other reasons. However, states may receive 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 and provincial wildlife-management agencies through the requirement for state permits for protected species; and would not substantially increase human-caused wolf-mortality rates.

Commercial and Recreational Uses—Across the subspecies' range any legal take is regulated by provincial or state law to maintain sustainable wolf populations while also protecting big-game numbers and providing for recreational hunting and trapping (See factor D). Because wolves are highly territorial, wolf populations in saturated habitat naturally limit further population increases through wolf-to-wolf conflict or dispersal to unoccupied habitat. As stated previously, wolf populations can maintain themselves despite high human-caused mortality rates (Mech 2001, p. 74; Fuller *et al.* 2003, pp. 184–185; Adams *et al.* 2008, p. 22; Creel and Rotella 2010, p. 5; Sparkman *et al.* 2011, p. 5; Gude *et al.* 2011, pp. 113–116; Vucetich and Carroll In Review). Wolf pups can 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 regulated.

States and provinces within the range of *C. l. occidentalis* regulate human-caused mortality 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. States, provinces, and some tribes allow regulated public harvest of surplus wolves 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 is regulated by state or provincial law (see discussion of state and provincial laws and regulations under factor D). The regulated take of those wolves is not affecting the viability of the subspecies because the

states and provinces allow such take only for wolves that are surplus to maintaining a sustainable population. We do not expect this to change in the future.

Alaska's wolves are managed as a furbearer (ADFG 2011, entire), and also as a predator species that may be subject to control measures to increase big-game numbers (Titus 2007, entire; ADFG 2007, entire). The state of Alaska monitors wolf populations using a variety of methods including aerial surveys in winter and reports by trappers (ADFG 2007, p. 10). Alaska's wolf management is guided by the principle of sustainable yield, such that annual harvest should not exceed the annual regeneration of a resource unless management goals encompass reducing a population to a lower, but still sustainable, level (ADFG, 2007, p. 6). In designated Intensive Predator Control Areas high numbers of ungulate species are maintained by law for human consumption. In these areas, if ADFG determines that wild ungulate (generally moose and caribou) populations are being depressed below predetermined population objectives, ADFG must consider and evaluate intensive management actions (which may include wolf population reduction) as a means of attaining the objectives (ADFG 2007, p. 6). This control program has been thoroughly scientifically vetted; see Orians *et al.* 1997 (entire) for further information on the scientific basis of Alaska's predator control program.

The Yukon has a wolf-management policy and has implemented wolf control to increase ungulate populations (COSEWIC 2001, p. 22; Government of Yukon 2012, entire). The total take of wolves due to hunting, trapping, and control efforts has not exceeded three percent of the population per year since 1993, when control efforts began (COSEWIC 2001, p. 22).

The Northwest Territories manage wolves as a harvestable species both through hunting and trapping with specific seasons for harvest for both aboriginal and nonaboriginal hunters (COSEWIC 2001, p. 23; Government of Northwest Territories 2011, pp. 7–12). There is no bag limit for aboriginal hunters but nonaboriginal hunters are limited to one wolf per season. Harvest numbers are known only for wolf pelts sold on the open market as pelts used domestically are not counted by the Provincial Government (COSEWIC 2001, p. 23). In the past 10 years, fur auction sales have ranged from 711 to 1,469 pelts annually from these 2 territories (COSEWIC 2001, p. 25). Although the amount to which domestic use adds to the total harvest is not known, it is not thought to be significant (COSEWIC 2001, p. 25).

In British Columbia wolves are legally classified as a furbearer and as big game and may be taken during fall and winter (COSEWIC 2001, p. 22; British Columbia Ministry of Environment 2011, entire). Official records from 1992 to 1997 indicate that from 287 to 588 wolves were harvested during these years. Again, it is likely that most of these animals were *C. l. occidentalis* due to their wide range in the province.

Wolves are managed as ''furbearing carnivores'' in Alberta and can be harvested during open seasons with proper license on Crown (government) Land and any time without a license on private property (COSEWIC 2001, p. 21; Government of Alberta 2011a, entire; 2011b, entire). Wolves are also lethally removed in response to livestock depredation (COSEWIC 2001, p. 21). Wolves are classified as a furbearer in Saskatchewan and can be taken only by licensed trappers during trapping season (COSEWIC 2001, p. 21; Government of Saskatchewan 2011, entire). In Manitoba, wolves are managed as a big-game species and can be taken by hunters and trappers in season or on agricultural lands at any time (COSEWIC 2001, p. 21; Government of Manitoba 2011a, entire; 2011b, entire).

In summary, the states and provinces have regulatory and enforcement systems in place to limit human-caused mortality of wolves in all areas of the subspecies' distribution where regulated take is important to maintaining wolf populations into the future. Canadian Provinces and Alaska maintain wolf populations to be sustainably harvested by hunters and trappers. The states and provinces have humane and professional animal-handling protocols and trained personnel that will continue to ensure that population monitoring and research result in few unintentional mortalities. Furthermore, the states' and provinces' permitting processes for captive wildlife and animal care will continue to ensure that few, if any, wolves will be removed from the wild solely for educational purposes. We conclude that any potential wolf take resulting from commercial, scientific, or educational purposes in the range of the subspecies is and will continue to be regulated so that these factors are not affecting the viability of *C. l. occidentalis* now and are not likely to do so in the future.

Factor C. Disease or Predation

Wolves within the NRM DPS were delisted based in part on our conclusion that impacts from disease and predation do not pose a significant threat to that population. For a full discussion of this factor in the NRM DPS, see the final delisting rules (74 FR 15162–15166, April 2, 2009; 77 FR 55582–55588, September 10, 2012). The array of diseases, parasites, and predators affecting *C. l. occidentalis* is similar to that affecting other wolf subspecies. For a full discussion of the effects of disease, parasites, and predators on wolves, see factor C in the *C. l. nubilus* section above—the information there applies to *C. l. occidentalis* as well. No diseases or parasites, even in combination, are of such magnitude that they are significantly affecting *C. l. occidentalis.* Similarly, predation, including human-caused mortality, is not significantly affecting the subspecies. The rates of mortality caused by disease, parasites, and predation are well within acceptable limits, and we do not expect those rates to change appreciably in the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to those existing and foreseeable threats, discussed under the other factors that may affect *C. l. occidentalis.* Wolves within the NRM DPS were delisted based in part on our conclusion that adequate regulatory mechanisms would be in place for that population following delisting. For a full discussion of the regulatory mechanisms in place for gray wolves in the NRM DPS, see the final delisting rules (74 FR 15123, April 2, 2009; and 77 FR 55530, September 10, 2012). Within the range of *C. l. occidentalis* in Canada and Alaska, wolf populations are managed as big game and as a furbearer and with hunting and trapping the principal management tool used to keep populations within the limits of human tolerance. Each state and province within the range has committed to maintain sustainable populations while allowing for harvest and minimizing conflict with livestock. Maintaining wild ungulate populations in numbers that allow for liberal human harvest for local consumption is also a priority in many areas.

Although wolves are not dependent on specific habitat features other than an adequate food supply and human tolerance, state, provincial, and Federal land-management regimes are in place that provide protection for wolves and wolf habitat throughout the range of *C. l. occidentalis* in Alaska and Canada. In Alaska, lands managed by the National Park Service and the Service are not subject to predator control by the state

of Alaska (Boertje *et al.* 2010, p. 923). In addition, National Parks do not allow hunting. In Canada, National Parks in the southern portion of the range of *C. l. occidentalis* do not allow hunting, while National Parks in the northern portion of the range allow hunting by Native Peoples (COSEWIC 2001, p. 26). These land-management regimes provide refugia for wolf populations from hunting, trapping, and control activities, and in turn these protected populations may serve as a source of dispersing wolves for low-density populations.

We have long recognized that control of wolf numbers and especially depredating wolves is central to maintaining public support for wolf conservation. Much of the impact of livestock production on *C. l. occidentalis* in Alaska and Canada occurred during the period between settlement and the mid-twentieth century when wolves were extirpated from the prairie regions and larger intermountain valleys of southern Canada due to depredations on livestock. Wolves have not repopulated these regions due to continued lack of human tolerance to their presence. Outside of these relatively high human density areas, wolf populations have remained resilient since the cessation of widespread predator poisoning campaigns in the 1950s.

We have no information to suggest that the current regulatory regime in Alaska or Canada is not adequate to provide for the conservation of *C. l. occidentalis.* The subspecies appears to maintain healthy populations and relatively high numbers across most of its historical range and is actively managed to provide for sustainable populations while at the same time address conflicts with humans. The jurisdictions in these areas have been successful in their search for an appropriate balance between wolf conservation, human tolerance, and providing for human uses. Therefore, we have determined that both in Canada and the United States the existing regulatory mechanisms are currently adequate to provide for the long-term conservation of *C. l. occidentalis.* This will remain the case after the current *C. lupus* listed entity is delisted as only a few *C. l. occidentalis* are known to reside outside of the already delisted area in the northern Rocky Mountains.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Wolves in the NRM DPS were delisted based in part on our conclusion that other natural or manmade factors are unlikely to pose a threat to the wolves in the NRM DPS in the future. For a full discussion of this factor for the NRM DPS, see the final delisting rules (74 FR 15123, April 2, 2009 and 77 FR 55530, September 10, 2012).

Public Attitudes Toward the Gray Wolf—In much of Alaska and Western Canada, in contrast to the contiguous United States, wolves are not dependent on human tolerance for their conservation. Even during the height of wolf-control efforts that included broadcast indiscriminate poisoning and trapping campaigns by the public and government agencies, wolves were able to maintain viable populations in much of Canada and Alaska simply by virtue of remote and rugged terrain and low human population densities. However, in much of coastal Alaska and southern Canada today, public attitudes toward wolves are important conservation issues. In these areas with higher human densities and the presence of livestock, the primary determinant of the long-term conservation of gray wolves will be human attitudes toward this large predator. 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, killing of wolves by people, and the wolf-related traditions of Native American Tribes or local culture. We strive to find a balance in wolf management that will sustain wolf populations but also address other human concerns in a way that maintains tolerance of wolves among the human populations that live with them. Addressing these concerns will often involve lethal take of wolves or other removal methods. These activities, when employed in an overall management framework, are essential wolf-conservation activities as they provide the public with assurances that human interests and needs will be considered appropriately during wolf-management decisions. At this time, this balance appears to have been achieved across the range of *C. l. occidentalis* through the many management actions employed in the many jurisdictions involved, and public attitudes do not constitute a threat to the subspecies.

Predator control—Wolf numbers have been the subject of control efforts to reduce conflicts with livestock and to increase ungulate numbers in Alaska and Canada since the turn of the twentieth century (Boertje *et al.* 2010, p. 917). Since the 1970s, wolf control has been focused on increasing populations of wild ungulates, mostly moose but also caribou, both for human consumption and in some cases to conserve caribou herds that were at risk (Russell 2010, pp. 6–12). Wolf control has included both lethal and nonlethal methods using public hunting and trapping seasons, aerial gunning by government agents, and experimentation with predator exclosures, sterilization, and supplemental feeding (Russell 2010, pp. 6–12). The state of Alaska has been the most active in wolf control since the 1970s, maintaining predator control areas where wolf numbers are reduced to increase moose populations for human harvest (see Titus 2007, entire, for a review of Alaska's Intensive Predator Management program). Other jurisdictions have employed wolf control to address specific perceived problems or experimentally to determine if wolf control is an effective ungulate–management tool (Russell 2010, pp. 6–12).

Predator-control programs as they currently exist are not a threat and are not expected to become a threat to *C. l. occidentalis* for several reasons:

(1) The types of control measures that have resulted in effective extirpation of wolf populations from large areas are no longer permitted or prescribed by the states and provinces that pursue wolf control. Historically, wolves were persecuted by people seeking to eliminate wolves from the landscape using any means necessary. These means included government agencies systematically poisoning and trapping with the expressed goal of extirpation of wolves if at all possible. Wolf-control programs and associated research in Alaska and Canada today have as their goal the maintenance of sustainable (though low-density) wolf populations. They do not employ indiscriminate broadcast poisoning, and trapping or shooting of wolves is limited by estimates of population numbers with the goal of reducing but not eliminating wolf populations.

(2) Wolf control is very expensive and so is not likely to be applied broadly enough and consistently enough to reduce the rangewide population of *C. l. occidentalis* substantially. For example, in Alaska, where wolf control is most active, control areas are located near human populations and cover approximately nine percent of the state. This relatively small area of coverage by control activities leaves most of the state as ''refuge'' for wolf populations where regulated hunting and trapping occurs, but special control efforts are not prescribed. Typically, wolf control areas

are repopulated within 4 years of cessation of control efforts, indicating that population control is temporary and reliant on constant application of control efforts (Boertje *et al.* 2010, p. 920).

(3) Wolf control must be applied over a large area to be effective (National Research Council 1997, p. 10). This fact, combined with number 2 above, ensures that wolf control is not likely to be applied unless wolf populations are high enough for the perceived benefits to outweigh the costs. This situation is not likely to exist over a large portion of the subspecies' range simultaneously.

(4) Wolves are extremely resilient with high population-growth potential and high rates of movement. After control operations, wolf populations recover to precontrol levels within a few years.

(5) Wolf control will be applied only where wolf populations are high. This means that wolf control may act as a density-dependent population-control mechanism. When wolf populations are high, ungulate populations become depressed, leading to pressures for management authorities to employ predator control actions to address the situation. As predator populations are reduced and ungulate populations rebound, pressure to continue the control actions is reduced, leading to reduction or cessation of the program to reduce expenditures. This dynamic likely supplies some added protection and makes it even less likely that wolf control will become a threat to the subspecies.

Climate Change—Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the IPCC. ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Throughout their circumpolar distribution, gray wolves persist in a variety of ecosystems with temperatures ranging from −70 °F to 120 °F (−57 °C to 49 °C) with wide ranging prey type and availability (Mech and Boitani 2003, p. xv). *C. l. occidentalis* are historically and currently known to have inhabited a range of ecotypes, subsisting on large ungulate prey as well as small mammals. Due to this plasticity, we do not consider *C. l. occidentalis* to be highly vulnerable to climate change. Similarly, elk and bison, the primary prey in many areas, are known to be habitat generalists due to their association with wide variation in environmental conditions (Kuck 1999, p. 1). We recognize that climate change may have detectable impacts on the ecosystems that affect *C. l. occidentalis.* For example, temperature and precipitation changes could lead to changes in tree cover over large areas in boreal Canada and Alaska. These changes could result in increased forage and lower rates of winter die-off for ungulates, and possible beneficial effects to wolves. We have no indication that these potential impacts of climate change are affecting *C. l. occidentalis* at the current time or in the future. For a full discussion of potential impacts of climate change on wolves, please see our recent final delisting rule for the gray wolf in Wyoming (77 FR 55597–55598, September 10, 2012).

Summary of Factor E

Natural or manmade factors are not affecting the viability of *C. l. occidentalis* nor are they likely to do so in the future. Positive public attitudes continue to be fostered through management of conflicts and hunting/trapping opportunities and their associated economic benefits. Genetic viability is good with no prospects for widespread loss of genetic diversity. Wolf control to increase ungulate numbers is pursued in local areas but is not likely to have a significant effect on wolves. In addition, control actions are not aimed at extirpation of wolf populations, but instead seek to reduce overall density of wolves while maintaining viable populations.

Cumulative Effects

A species may be affected by more than one factor in combination. Within the preceding review of the five listing factors, we discussed potential factors that may have interrelated impacts on *C. l. occidentalis.* Our analysis did not find any significant effects to *C. l. occidentalis.* However, we recognize that multiple sources of mortality acting in combination have greater potential to affect wolves than each source alone. Thus, we consider how the combination of factors may affect *C. l. occidentalis. Canis lupus occidentalis* occurs as well-connected, resilient populations across most of its historical geographic range and has expanded into some areas of historical *C. l. nubilus* range in recent years. Given the current size of the *C. l. occidentalis* population in Canada and Alaska and the lack of identified effects, we do not find any combination of factors to be a significant threat.

Conclusion

As required by the Act, we considered the five factors in assessing whether the subspecies *C. l. occidentalis* is threatened or endangered throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the subspecies. We reviewed the information available in our files and other available published and unpublished information, and we consulted with recognized experts and other Federal, state, and tribal agencies. We also reviewed the report from COSEWIC (1999, entire) for status and threats to Canadian wolf populations (See Canada in the Status section above). During this process we did not identify any effects to the subspecies that would rise to the level of threatening or endangering this subspecies. *C. l. occidentalis* was extirpated from the Great Plains of southern Canada and northern United States by the 1930s and have not re-established populations in these areas. It is likely that land uses associated with agriculture and livestock make these areas unsuitable for wolf occupation in the future. Past range contraction can be evidence of threats that may still be acting on the species, and is therefore relevant in considering the status of the species in its remaining range. Thus, we considered whether the extirpation of *C. l. occidentalis* from these areas suggests that the remaining range may likewise be subject to the threats that caused the past range contraction such that substantial additional range contraction is likely. We determined that it is not. The past range contraction was caused largely by conflict with man resulting from the introduction of intensive livestock growing and agriculture in suitable areas concurrent with European expansion across the continent; as

discussed above most of the remaining range of *C. l. occidentalis* is not suitable for conversion to intensive livestock growing and agriculture, nor has there been significant expansion of those activities or human population growth into occupied wolf habitat for many decades. This conclusion is consistent with the observed pattern of *C. l. occidentalis* range over time: The contraction occurred as intensive human use of the land expanded; both that expansion and *C. l. occidentalis* range contraction halted many decades ago; and *C. l. occidentalis* range is now stable or expanding. This strongly supports the conclusion that the factors that were responsible for the *C. l. occidentlais'* range contraction will not cause further range contraction, and will not result in the subspecies becoming endangered in the foreseeable future. See the Significant Portion of the Range Analysis section below for our evaluation as to whether this subspecies may or may not be in danger of extinction in a significant portion of its range.

Does the North American subspecies C. l. baileyi warrant the protections of the Act?

Subspecies Description

C. l. baileyi is the smallest extant gray wolf in North America. Adults weigh 23 to 41 kg (50 to 90 lb) with a length of 1.5 to 1.8 m (5 to 6 ft) and height at shoulder of 63–81 cm (25–32 in) (Brown 1988, p. 119). *C. l. baileyi* are typically a patchy black, brown to cinnamon, and cream color, with primarily light underparts (Brown 1988, p. 118). Solid black or white coloration, as seen in other North American gray wolves, does not exist in *C. l. baileyi.* Basic life history for *C. l. baileyi* is similar to that of other gray wolves (Mech 1970, entire; Service 1982, p. 11; Service 2010, pp. 32–41).

Historical Distribution and Causes of Decline

Prior to the late 1800s, *C. l. baileyi* inhabited the southwestern United States and Mexico. In Mexico, *C. l. baileyi* ranged from the northern border of the country southward through the Sierra Madre Oriental and Occidental and the altiplano (high plains) to the Neovolcanic Axis (a volcanic belt that runs east–west across central-southern Mexico) (SEMARNAP 2000, p. 8), although wolf distribution may not have been continuous through this entire region (McBride 1980, pp. 2–7). *C. l. baileyi* is the only subspecies known to have inhabited Mexico. In the United States, *C. l. baileyi* (and, in some areas, *C. l. nubilus* and the previously recognized subspecies *C. l. monstrabilis, C. l. mogollonensis,* and *C. l. youngi*) inhabited montane forests and woodlands in portions of New Mexico, Arizona, and Texas (Young and Goldman 1944, p. 471; Brown 1988, pp. 22–23) (see Taxonomy). In southern Arizona, *C. l. baileyi* inhabited the Santa Rita, Tumacacori, Atascosa-Pajarito, Patagonia, Chiricahua, Huachuca, Pinaleno, and Catalina mountains, west to the Baboquivaris and east into New Mexico (Brown 1983, pp. 22–23). In central and northern Arizona, *C. l. baileyi* and other subspecies of gray wolf were interspersed (Brown 1983, pp. 23–24). *C. l. baileyi* and other subspecies were present throughout New Mexico, with the exception of low desert areas, documented as numerous or persisting in areas including the Mogollon, Elk, Tularosa, Diablo and Pinos Altos Mountains, the Black Range, Datil, Gallinas, San Mateo, Mount Taylor, Animas, and Sacramento Mountains (Brown 1983, pp. 24–25). Gray wolf distribution (of other subspecies) continued eastward into the Trans-Pecos region of Texas and northward up the Rocky Mountains and to the Grand Canyon (Young and Goldman 1944, pp. 23, 50, 404–405).

Population estimates of gray wolves, and specifically *C. l. baileyi,* prior to the late 1800s are not available for the southwestern United States or Mexico. Some trapping records and rough population estimates are available from the early 1900s, but do not provide a rigorous estimate of population size of *C. l. baileyi* in the United States or Mexico. For New Mexico, a statewide carrying capacity (potential habitat) of about 1,500 gray wolves was hypothesized by Bednarz, with an estimate of 480 to 1030 wolves present in 1915 (ibid, pp. 6, 12). Brown summarized historical distribution records for the wolf from McBride (1980, p. 2) and other sources, showing most records in the southwestern United States as being from the Blue Range and the Animas region of New Mexico (Brown 1983, p. 10). In Mexico, Young and Goldman (1944, p. 28) stated that from 1916 to 1918 *C. l. baileyi* was fairly numerous in Sonora, Chihuahua, and Coahuila, although McBride comments that *C. l. baileyi* apparently did not inhabit the eastern and northern portions of Coahuila, even in areas with seemingly good habitat (1980, p. 2). The 1982 Mexican Wolf Recovery Plan cautioned; ''It is important . . . not to accept unquestioningly the accounts of the 1800s and early 1900s that speak of huge numbers of wolves ravaging herds of livestock and game . . . . The total recorded take indicates a much sparser number of wolves in the treated areas than the complaints of damage state or signify, even when one remembers that these figures do not reflect the additional numbers of wolves taken by ranchers, bounty-seekers and other private individuals (Service 1982, p. 4).''

C. l. baileyi populations declined rapidly in the early and mid-1900s, due to government and private efforts across the United States to kill wolves and other predators responsible for livestock depredation. By 1925, poisoning, hunting, and trapping efforts drastically reduced *C. l. baileyi* populations in all but a few remote areas of the southwestern United States, and control efforts shifted to wolves in the borderlands between the United States and Mexico (Brown 1983, p. 71). Bednarz (1988, p. 12) estimated that breeding populations of *C. l. baileyi* were extirpated from the United States by 1942. The use of increasingly effective poisons and trapping techniques during the 1950s and 1960s eliminated remaining wolves north of the United States–Mexico border, although occasional reports of wolves crossing into the United States from Mexico persisted into the 1960s. Wolf distribution in northern Mexico contracted to encompass the Sierra Madre Occidental in Chihuahua, Sonora, and Durango, as well as a disjunct population in western Coahuila (from the Sierra del Carmen westward). Leopold (1959, p. 402) found conflicting reports on the status of the Coahuila population and stated that wolves were likely less abundant there than in the Sierra Madre Occidental.

When *C. l. baileyi* was listed as endangered under the Act in 1976, no wild populations were known to remain in the United States or Mexico. McBride (1980, pp. 2–8) conducted a survey to determine the status and distribution of wolves in Mexico in 1977. He mapped 3 general areas where wolves were recorded as still present in the Sierra Madre Occidental: (1) Northern Chihuahua and Sonora border (at least 8 wolves); (2) western Durango (at least 20 wolves in 2 areas); and (3) a small area in southern Zacatecas. Although occasional anecdotal reports have been made during the last three decades that a few wild wolves still inhabit forested areas in Mexico, no publicly available documented verification exists. Several individuals of *C. l. baileyi* captured in the wild in Mexico became the basis for the captive-breeding program that has enabled the reintroduction of *C. l.*

baileyi to the wild (see below, Current Distribution—In Captivity).

C. l. baileyi—Current Distribution—United States

Today, a single wild population of a minimum of 75 *C. l. baileyi* (December 31, 2012 population count) inhabits the United States in central Arizona and New Mexico. We began reintroducing captive-born *C. l. baileyi* to the wild in 1998 as a nonessential experimental population under section 10(j) of the Act in the Blue Range Wolf Recovery Area (BRWRA) within the Mexican Wolf Experimental Population Area (MWEPA). The BRWRA consists of the entire Gila and Apache National Forests in east-central Arizona and west-central New Mexico (6,845 mi^2 or 17,775 km^2). The MWEPA is a larger area surrounding the BRWRA that extends from Interstate Highway 10 to Interstate Highway 40 across Arizona and New Mexico and a small portion of Texas north of U.S. Highway 62/180 (63 FR 1752; January 12, 1998).

C. l. baileyi associated with the BRWRA also occupy the Fort Apache Indian Reservation of the White Mountain Apache Tribe, adjacent to the western boundary of the BRWRA. Since 2000, an agreement between the Service and the White Mountain Apache Tribe permits the release, dispersal, and establishment of *C. l. baileyi* onto the reservation, providing an additional 6,475 km^2 (2,500 mi^2) of high-quality forested wolf habitat for the reintroduction (Service 2001, p. 4). Information about the number and location of wolves on the reservation is not publicly available by request of the White Mountain Apache Tribe.

Since 1998, we have been striving to establish a population of at least 100 wild wolves in the BRWRA. This population target was first recommended in the 1982 Mexican Wolf Recovery Plan as an interim goal upon which to base future recovery goals and expectations and was subsequently brought forward in our 1998 Final Rule, ''Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico.'' We continue to acknowledge that this population target is appropriate as an interim objective (Service 1982, p. 28, Service 1996, p. 1–1) but insufficient for recovery and delisting of *C. l. baileyi,* as the subspecies would still be in danger of extinction with a single population of this size (Service 2010, pp. 78–79).

Detailed information on the status of the nonessential experimental population and the reintroduction project can be found in the 2001 to 2011 annual reports and the 2010 Mexican Wolf Conservation Assessment (Service 2010) available at: *www.fws.gov/southwest.es/mexicanwolf.*

C. l. baileyi—Current Distribution—Mexico

Mexico initiated the reestablishment of *C. l. baileyi* to the wild (see Historical Distribution) with the release of five captive-bred *C. l. baileyi* into the San Luis Mountains just south of the U.S.–Mexico border in October 2011. As of February 2012, four of the five released animals were confirmed dead due to ingestion of illegal poison. The status of the fifth wolf is unknown. A sixth wolf was released in March 2012; its fate is unknown as only its collar was found in April 2012 (Service, our files). In October 2012, a pair of wolves was released and both are alive as of March 3, 2013. Mexico plans to release additional wolves in this area, and possibly several other locations in Mexico in 2013; however, a schedule of releases is not publicly available at this time. We expect the number of wolves in Mexico to fluctuate from zero to several wolves or packs of wolves during 2013 in or around Sonora, Durango, and Chihuahua.

C. l. baileyi—Current Distribution—In Captivity

Due to the extirpation of *C. l. baileyi* in the United States and Mexico, the first step for the recovery of the subspecies was the development of a captive-breeding population to ensure the subspecies did not go extinct. A binational captive-breeding program between the United States and Mexico, referred to as the Mexican Wolf Species Survival Plan (SSP), was initiated in 1977 to 1980 with the capture of the last known *C. l. baileyi* in the wild in Mexico and subsequent addition of wolves from captivity in Mexico and the United States. The individual wolves used to establish the captive-breeding program are considered the ''founders'' of the breeding population. Seven founder wolves represent three founding lineages (family groups): McBride (also known as the Certified lineage; three individuals), Ghost Ranch (two individuals), and Aragon (two individuals). Through the breeding of seven founding wolves from these three lineages and generations of their offspring, the population has expanded through the years to its current size.

Close to 300 *C. l. baileyi* are now housed in captivity as part of the SSP captive-management program (258 wolves in 52 facilities: 34 facilities in the United States and 18 facilities in Mexico as of October 12, 2012) (Siminski and Spevak 2012, p. 2). The purpose of the SSP is to reestablish *C. l. baileyi* in the wild through captive breeding, public education, and research. This captive population is the sole source of *C. l. baileyi* available to reestablish the species in the wild and is imperative to the success of the *C. l. baileyi* reintroduction project and any additional efforts to reestablish the subspecies that may be pursued in the future in Mexico by the General del Vida Silvestre or by the Service in the United States.

Captive *C. l. baileyi* are routinely transferred among the zoos and other SSP holding facilities to facilitate genetic exchange (through breeding) and maintain the health and genetic diversity of the captive population. The SSP strives to house a minimum of 240 wolves in captivity at all times to ensure the security of the species in captivity, while still being able to produce surplus animals for reintroduction.

In the United States, *C. l. baileyi* from captive SSP facilities that are identified for potential release are first sent to one of three prerelease facilities to be evaluated for release suitability and to undergo an acclimation process. All wolves selected for release in the United States and Mexico are genetically redundant to the captive population, meaning their genes are already well represented. This minimizes any adverse effects on the genetic integrity of the remaining captive population in the event wolves released to the wild do not survive.

Habitat Description

Historically, *C. l. baileyi* was associated with montane woodlands characterized by sparsely to densely forested mountainous terrain consisting of evergreen oaks (*Quercus* spp.) or pinyon (*Pinus edulus*) and juniper (*Juniperus* spp.) to higher elevation pine (*Pinus* spp.), mixed-conifer forests, and adjacent grasslands at elevations of 4,000 to 5,000 ft (1,219 to 1,524 m) where ungulate prey were numerous. Factors making these vegetation communities attractive to *C. l. baileyi* likely included the abundance of ungulate prey, availability of water, and the presence of hiding cover and suitable den sites. Early investigators reported that *C. l. baileyi* probably avoided desert scrub and semidesert grasslands that provided little cover, food, or water (Brown 1988, pp. 19–22).

Prior to their extirpation in the wild, *C. l. baileyi* were believed to have preyed upon white-tailed deer (*Odocoileus virginianus*), mule deer (*O. hemionus*), elk (*Cervus elaphus*), collared peccaries (javelina) (*Tayassu*

tajacu), pronghorn (*Antilocapra americana*), bighorn sheep (*Ovis canadensis*), jackrabbits (*Lepus spp.*), cottontails (*Sylvilagus spp.*), and small rodents (Parsons and Nicholopoulos 1995, pp. 141–142); white-tailed deer and mule deer were believed to be the primary sources of prey (Brown 1988, p. 132; Bednarz 1988, p. 29).

Today, *C. l. baileyi* in Arizona and New Mexico inhabit evergreen pine-oak woodlands (i.e., Madrean woodlands), pinyon-juniper woodlands (i.e., Great Basin conifer forests), and mixed-conifer montane forests (i.e., Rocky Mountain, or petran, forests) that are inhabited by elk, mule deer, and white-tailed deer (Service 1996, p. 3–5; AMOC and IFT 2005, p. TC–3). *C. l. baileyi* in the BRWRA show a strong preference for elk compared to other ungulates (AMOC and IFT 2005, p. TC–14, Reed *et al.* 2006, pp. 56, 61; Merkle *et al.* 2009, p. 482). Other documented sources of prey include deer (*O. virginianus* and *O. hemionus*) and occasionally small mammals and birds (Reed *et al.* 2006, p. 55). *C. l. baileyi* are also known to prey and scavenge on livestock (Reed *et al.* 2006, p. 1129).

Summary of Information Pertaining to the Five Factors

Several threats analyses have been conducted for *C. l. baileyi.* In the initial proposal to list *C. l. baileyi* as endangered in 1975 and in the subsequent listing of the entire gray wolf species in the contiguous United States and Mexico in 1978, the Service found that threats from habitat loss (factor A), sport hunting (factor B), and inadequate regulatory protection from human targeted elimination (factor D) were responsible for *C. l. baileyi's* decline and near extinction (40 FR 17590, April 21, 1975; 43 FR 9607, March 9, 1978). In the 2003 reclassification of the gray wolf into three distinct population segments, threats identified for the gray wolf in the Southwestern Distinct Population Segment (which included Mexico, Arizona, New Mexico, and portions of Utah, Colorado, Oklahoma, and Texas) included illegal killing and (negative) public attitudes (68 FR 15804, April 1, 2003). The 2010 Mexican Wolf Conservation Assessment (Conservation Assessment) contains the most recent five-factor analysis for *C. l. baileyi* (Service 2010, p. 60). The purpose of the Conservation Assessment, which was a nonregulatory document, was to evaluate the status of the *C. l. baileyi* BRWRA reintroduction project within the broader context of the subspecies' recovery. The Conservation Assessment found that the combined threats of illegal shooting, small population size, inbreeding, and inadequate regulatory protection were hindering the ability of the current population to reach the population objective of at least 100 wolves in the BRWRA (Service 2010, p. 60).

The threats we address in this five-factor analysis and our conclusions about a given factor may differ from previous listing actions due to new information, or, in the case of the Conservation Assessment, the difference in perspective necessitated by the listing process compared to that of the Conservation Assessment, which was focused on recovery. For example, in this five-factor analysis we analyze currently occupied habitat, whereas the Conservation Assessment included discussion of unoccupied habitat that may be important in the future for recovery. In this five-factor analysis, we are assessing which factors pose a threat to the existing population of wolves in the BRWRA or would pose a threat to these wolves if the protections of the Act were not in place.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

As previously discussed, wolves are considered habitat generalists with fairly broad ecological capabilities and flexibility in using different prey and vegetation communities (Peterson and Ciucci 2003, pp. 104–111). Gray wolves hunt in packs, primarily pursuing medium to large hooved mammals. Wolf density is positively correlated to the amount of ungulate biomass available and the vulnerability of ungulates to predation (Fuller *et al.* 2003, pp. 170–175). These characterizations apply to *C. l. baileyi* and form our basis for defining suitable habitat.

We define suitable habitat for *C. l. baileyi* as forested, montane terrain containing adequate wild ungulate populations (elk, white-tailed deer, and mule deer) to support a wolf population. Suitable habitat has minimal roads and human development, as human access to areas inhabited by wolves can result in wolf mortality. Specifically, roads can serve as a potential source of wolf mortality due to vehicular collision and because they provide humans with access to areas inhabited by wolves, which can facilitate illegal killing of wolves. Although the road itself could be considered a form of habitat modification, the primary threat to wolves related to roads stems from the activities enabled by the presence of roads (*i.e.,* vehicular collision and illegal killing) rather than a direct effect of the road on the wolf such as a boundary to dispersal. We address illegal killing under factor C. Disease or Predation, and vehicular collision under factor E. Other.

For *C. l. baileyi,* we define habitat destruction, modification, or curtailment as a decrease or modification in the extent or quality of forested, montane terrain in currently occupied habitat, or a decrease in ungulate populations in currently occupied habitat, such that wolves would not persist in that area. In order to assess whether habitat destruction, modification, or curtailment is a threat to *C. l. baileyi,* we consider information related to land status (as a characteristic of quality related to minimal human development), ungulate population density, and the effects of catastrophic wildfire on wolves and ungulates. Our definitions of suitable habitat and of habitat destruction, modification, and curtailment are the same for the United States and Mexico. Climate change, which has sometimes been addressed under factor A by the Service in other listing rules, is addressed under factor E. Other.

United States—C. l. baileyi currently occupies the BRWRA and the adjacent Fort Apache Indian Reservation. The 17,775 km² (6,845 mi²) BRWRA has consistently been identified as one of the highest quality sites for *C. l. baileyi* establishment in the Southwest based on its size, public-land status, prey abundance, low road density, and additional characteristics such as topography, water availability, and historical inhabitance by wolves (Johnson *et al.* 1992, pp. 28–42, 47–48; Service 1996, pp. 2-2–2-4; Carroll *et al.* 2005, pp. 1, 30, 31; Carroll *et al.* 2006, p. 33). The Fort Apache Indian Reservation provides an additional 6,475 km² (2,500 mi²) of high-quality forested wolf habitat for the reintroduction (Service 2001, p. 4) (see Current Distribution—United States). Although wolves occasionally occupy areas outside of the BRWRA or Fort Apache Indian Reservation within the MWEPA, the Service does not currently allow *C. l. baileyi* to establish territories on public lands wholly outside of the BRWRA boundaries (63 FR 1754; January 12, 1998). In compliance with the existing regulations of our nonessential experimental population designation, wolves that establish territories wholly outside the BRWRA but inside the MWEPA are captured and returned to a recovery area or to captivity. The Service does not routinely capture and return wolves that make occasional forays onto public land outside of the BRWRA (63 FR 1771; January 12, 1998). Given our current

regulations for the nonessential experimental population requiring wolf establishment to occur only within the BRWRA (63 FR 1771; January 12, 1998), we do not consider temporary occupation outside the BRWRA or Fort Apache Indian Reservation to be relevant to our analysis of habitat destruction, modification, or curtailment. Elsewhere in today's **Federal Register**, we propose revisions to our regulations for the nonessential experimental population.

We consider the public-land status of the BRWRA to be an important characteristic of the quality of the reintroduction area: 95 percent of the BRWRA is U.S Department of Agriculture (USDA) Forest Service lands, made up of the entire Gila and Apache National Forests (with a number of small private inholdings making up the last 5 percent). Public lands such as National Forests are considered to have the most appropriate conditions for wolf reintroduction and recovery efforts because they typically have significantly lesser degrees of human development and habitat degradation than other land-ownership types (Fritts and Carbyn 1995, p. 26). We do not have any information or foresee any change in the size, status, ownership, or management of the Gila and Apache National Forests in the future. If *C. l. baileyi* were not protected by the Act, we cannot foresee any changes to the status of these National Forests such that suitability for wolves would significantly diminish.

The most prevalent biotic communities in the BRWRA include petran montane and great basin conifer forests, plains and great basin grasslands, Madrean evergreen woodland, and semidesert grasslands (Service 1996, pp. 3–5). Elevation in the BRWRA ranges from 1,219 to 3,353m (4,000 to 11,000 ft), from the lowlands of the San Francisco River to the top of Mount Baldy, Escudilla Mountain, and the Mogollon Mountains. In 2011 (minimum population count of 58), wolves occupied 6,959 km^2 (2,687 mi^2) (approximately 40 percent) of the BRWRA, utilizing habitat throughout a wide range of elevations (based on location of home ranges in 2011, Service 2011, p. 23). (We are in the process of calculating occupied range for 2012, in which our minimum population estimate rose to 75 wolves.)

The vegetation communities of the BRWRA support elk, white-tailed deer, and mule deer. Prior to the reintroduction, the Service determined that adequate prey was available in the BRWRA to support a population of at least 100 wolves based on estimates of elk and deer (Service 1996, pp. 4–20). Our current estimates continue to support this finding. In 2005, we assessed documented predation events in the BRWRA and confirmed that prey were adequate to support the population (AMOC and IFT 2005, p. TC–19). More recently, we estimated a ''theoretical biologically supportable wolf population'' using the number of elk and deer presented in the Final Environmental Impact Statement, ''Reintroduction of the Mexican Wolf Within Its Historic Range in the Southwestern United States'' (Service 1996), and in more recent estimates (Heffelfinger, unpublished data) that relates Ungulate Biomass Index (UBI) to wolves per 1,000 km^2 (Fuller *et al.* 2003, p. 171).

The UBI scales wild ungulates on the landscape to deer equivalents. For instance, an elk is considered three times the size of deer in the UBI scale, whereas the smaller white-tailed deer were scaled as a 0.5 deer equivalent. Mule deer were given a score of 1. Our results suggest that estimated current ungulate populations in the BRWRA could support from 203 to 354 wolves. However, we recognize that other factors may limit how many wolves could be supported on the landscape, such as management of wolves related to interactions with livestock and humans, patchy distribution of prey, uncertainties associated with a multiprey system, and social interactions among wolves. No observation or documentation of behavior (e.g., high levels of intraspecific strife) or significant levels of wolf mortality due to starvation have been made during the course of the reintroduction, supporting our conclusion that wolves are not food limited in the BRWRA (AMOC and IFT 2005, pp. 20–21; Service files).

Current and reasonably foreseeable management practices in the Gila and Apache National Forests are expected to support ungulate populations at levels that will sustain the current wolf population as it grows toward the population objective of at least 100 wild wolves. Prey populations throughout all of Arizona and New Mexico continue to be monitored by the state wildlife agencies within Game Management Units, the boundaries of which are defined in each state's hunting regulations. If *C. l. baileyi* was not protected by the Act, we do not predict any significant resulting change to the ungulate populations that inhabit the Gila and Apache National Forests such that habitat suitability for wolves would diminish.

Wildfire is a type of habitat modification that could affect the *C. l. baileyi* population in two primary ways—by killing of wolves directly or by causing changes in the abundance and distribution of ungulates. Two recent large wildfires, the Wallow Fire and the Whitewater–Baldy Complex Fire, have burned within close proximity to denning wolf packs in the BRWRA. Due to their very large size and rapid spread, both of these fires are considered catastrophic wildfires.

On May 29, 2011, the Wallow Fire began in Arizona and spread to over 538,000 acres (217,721 ha) in Arizona (Apache, Navajo, Graham, and Greenlee Counties; San Carlos Apache Indian Reservation, Fort Apache Indian Reservation) and New Mexico (Catron County) by the end of June (*www.inciweb.org/incident/2262;* accessed July 5, 2011). The Wallow Fire was human-caused (*www.inciweb.org/incident/2262;* accessed July 5, 2011) and is the second largest fire in Arizona's recorded history (*www.nasa.gov/mission_pages/fires/main/ariz-fire-20110609,* accessed November 1, 2012).

The Wallow Fire burned through approximately 11 percent of the BRWRA. Three known or presumed wolf pack denning locations (Rim pack, Bluestem pack, Hawks Nest pack) were within the fire's boundaries (Service 2011). Although we had initial concern that denning pups (which are not as mobile as adults or may depend on adults to move them from the den) may not survive the fire due to their proximity to the rapidly spreading fire, we did not document any wolf mortalities as a result of the fire. Telemetry information indicated all radio-collared animals survived, and pups from two of the packs whose den areas burned survived through the year's end to be included in the end-of-year population survey. While denning behavior was observed in the third pack, the presence of pups had not been confirmed prior to the fire, and no pups were documented with this pack at the year's end (Service 2011).

In addition to possible direct negative effects of the Wallow Fire (*i.e.,* mortality of wolves, which we did not document), we also considered whether the fire was likely to result in negative short- or long-term effects to ungulate populations. The Wallow Fire Rapid Assessment Team's postfire assessment hypothesized that elk and deer abundance will respond favorably as vegetation recovers, with ungulate abundance exceeding prefire conditions within 5 years due to decreased competition of forage and browse with fire-killed conifers (Dorum 2011, p. 3). Based on this information, we recognize

and will continue to monitor the potential for this fire to result in beneficial (increased prey) effects for *C. l. baileyi* over the next few years.

On May 16, 2012, the Whitewater-Baldy Complex fire was ignited by lightning strikes. It burned at least 297,845 acres (*www.inciweb.org/incident/2870,* July 23, 2012), including an additional (to the Wallow Fire) 7 percent of the BRWRA. The Whitewater-Baldy Complex Fire was contained 2 mi (3 km) from a denning wolf pack to the north (Dark Canyon pack) and 5 mi (8 km) from a denning wolf pack to the east (Middle Fork pack). We have not documented any adverse effects, including mortality, from the fire to these packs. We similarly hypothesize, as with the Wallow Fire, that elk and deer abundance will respond favorably as vegetation recovers in the burned area, with ungulate abundance exceeding pre-fire conditions within several years.

Given that we have not observed any wolf mortality associated with the Wallow and Whitewater-Baldy Complex fires, these specific fires have not significantly affected the *C. l. baileyi* population. Moreover, although these fires demonstrate the possibility that a catastrophic wildfire within the reintroduction area could result in mortality of less mobile, denning pups, we recognize that adult wolves are highly mobile animals and can move out of even a catastrophic fire's path. While mortality of pups would slow the growth of the population over a year or two, the adult, breeding animals drive the ability of the population to persist. We do not consider even these catastrophic fires to be a significant mortality risk to adult wolves given their mobility and, therefore, do not consider wildfire to be a significant threat to *C. l. baileyi.* Further, we predict that these fires will result in changes in vegetation communities and prey densities that will be favorable to wolves within a few years. We have no reason to believe there would be changes to the effects of fire on *C. l. baileyi* if they were not protected by the Act.

Mexico—C. l. baileyi appears to have been extirpated from the wild in Mexico for more than 30 years. Recently, researchers and officials in Mexico identified priority sites for reintroduction of *C. l. baileyi* in the states of Sonora, Durango, Zacatecas, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas based on vegetation type, records of historical wolf occurrence, and risk factors affecting wolf mortality associated with proximity to human development and roads (Araiza *et al.* 2012, pp. 630–637). Subsequently, officials in Mexico reintroduced eight wolves to the wild during 2011 and 2012 (see Current Distribution—Mexico). Four of these wolves are confirmed dead, the status of two wolves is unknown, and two wolves are alive (as of January 2, 2013).

We recognize that wolves are being reintroduced in Mexico to areas identified as priority sites based on current research (Araiza *et al.* 2012). However, we also note that Araiza *et. al's* habitat assessment does not include assessment of prey availability within the six identified areas, which is a critical indicator of habitat suitability. Some information on prey availability is currently being collected and synthesized by Mexico for specific locations, but is not publicly available at this time. We also note that, due to the majority of land in Mexico being held in private ownership, large patches of secure public land are unavailable in Mexico to support reintroduction, which has been an important characteristic of reintroduction sites in the United States. We will continue to observe the status of the wolf reintroduction effort in Mexico. At this time, because our focus in this analysis is on currently occupied range, the absence of a wolf population in Mexico precludes analysis of habitat threats to *C. l. baileyi* there.

Summary of Factor A

We have no information indicating that present or threatened habitat destruction, modification, or curtailment is significantly affecting *C. l. baileyi* or is likely to do so in the future. The BRWRA continues to provide an adequately sized area of protected, high-quality, forested montane terrain with adequate ungulate populations to support the current population of about 75 wolves. We do not foresee any changes in the status of the area (as National Forest land) or management of ungulates in occupied habitat. Further, we do not consider wildfire to be resulting in habitat destruction, modification, or curtailment that is threatening *C. l. baileyi,* although we recognize that future catastrophic wildfires have the potential to slow the growth of the population if pup mortality occurs in several packs.

We have not conducted an analysis of threats under factor A in Mexico due to the lack of a *C. l. baileyi* population there for more than 30 years. Based on the mortality of reintroduced wolves in Mexico during 2011–2012, we do not expect a population to be established there for several years.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Since the inception of the BRWRA *C. l. baileyi* reintroduction, we have not authorized legal killing or removal of wolves from the wild for commercial, recreational (*i.e.,* hunting), scientific, or educational purposes. We are not aware of any instances of illegal killing of BRWRA wolves for their pelts in the Southwest, or of illegal trafficking in *C. l. baileyi* pelts or parts. *C. l. baileyi* pelts and parts from wolves that die in captivity or in the wild may be used for educational or scientific purposes, such as taxidermy mounts for display, when permission is granted from the Service; most wolf parts are sent to a curatorial facility at the University of New Mexico to be preserved, catalogued, and stored. A recreational season for wolf hunting is not currently authorized in the Southwest.

We have authorized, through a section 10(a)(1)(A) research-and-recovery permit under 50 CFR 17.32, as well as in accordance with the Mexican wolf nonessential experimental population rule and section 10(j) management rule under 50 CFR 17.84(k), agency personnel to take any *C. l. baileyi* in the nonessential experimental population, as well as to conduct activities related directly to the recovery of reintroduced nonessential experimental populations of *C. l. baileyi* within Arizona and New Mexico. While some removal of individual *C. l. baileyi* (including lethal take) has occurred by the Service as a result of these measures, these actions are conducted within the purpose of our recovery program to contribute to the conservation of the Mexican gray wolf.

Several *C. l. baileyi* research projects occur in the BRWRA or adjacent tribal lands by independent researchers or project personnel, but these studies have utilized radio-telemetry, scat analysis, and other noninvasive methods that do not entail direct handling of, or impact to, wolves (*e.g.,* Cariappa *et al.* 2008, Breck *et al.* 2011, Rinkevich 2012). Nonlethal research for the purpose of conservation is also conducted on *C. l. baileyi* in the SSP captive-breeding program; projects include research on reproduction, artificial insemination, and gamete collection and preservation (see Service Mexican Wolf Recovery Program annual reports online at *www.fws.gov/southwest/es/mexicanwolf* for descriptions of past and current research projects). Research on disease and conditioned taste aversion is also being conducted in the SSP captive-breeding program. In all cases, any take

authorized by the Service for scientific, educational, and conservation purposes must benefit *C. l. baileyi* and promote its recovery.

Since reintroductions began in 1998, we are aware of 18 incidents in which *C. l. baileyi* were captured in nongovernmental (private) traps, 8 of which resulted in injury (including 2 mortalities). Sixteen of the total incidents occurred in New Mexico. While these injuries may have a significant effect on the individual wolf and may affect that particular animal's pack, they are relatively rare occurrences (18 known incidences in 15 years). We conclude that two mortalities over the course of the project have not affected the population's growth.

Absent the protection of the Act, *C. l. baileyi* could be protected from overutilization in the United States by State regulations and programs in Arizona and New Mexico and Federal law in Mexico. The Arizona Revised Statutes Title 17 gives the Arizona Game and Fish Commission (Commission) the authority to regulate take of wildlife in the state of Arizona. ''Take'' (to pursue, shoot, hunt, trap, kill, capture, snare, or net) of wildlife in Arizona on lands under the authority of the Arizona Game and Fish Commission is prohibited, unless a provision (*e.g.,* Commission Order, special rule, permit) is made to allow take. Arizona Game and Fish Commission Rules, Article 4, outlines additional restrictions that would provide further protections from overutilization including regulating and outlining prohibitions on possession and transport of illegally taken wildlife, and regulating and placing restrictions on scientific collection/handling of wildlife. Because Commission Order 14 (Other Birds and Mammals) does not open a hunting season on wolves, all take of *C. l. baileyi* in Arizona is prohibited (except via special permit, as for science and management purposes; permits that in-turn require the permittee to secure all required federal permits). A hunting season could be opened if the agency documented a harvestable surplus or identified a need for population reduction in a specific area. The Arizona Game and Fish Department, the administrative, management, and enforcement arm of the Commission, is charged with carrying out the Commission's programs and enforcing its regulations.

Pursuant to the Wildlife Conservation Act of New Mexico, it is unlawful to take, possess, transport, export, process, sell, or offer for sale or ship any state or Federal endangered species (17–2–41 NMSA), thus, as a state-listed endangered species, *C. l. baileyi* would be protected from take related to overutilization.

Similarly, in Mexico, the General Wildlife Law (''Ley General de Vida Silvestre'', 2000, as amended) provides regulation against take of species identified by the Norma Oficial Mexicana NOM–059–SEMARNAT–2010, ''Protección ambiental–Especies nativas de México de flora y fauna silvestres.'' These regulatory provisions are further discussed under factor D. The Inadequacy of Existing Regulatory Mechanisms.

Summary of Factor B

Based on available information, overutilization for commercial, recreational, scientific, or educational purposes does not occur or is exceedingly rare in the United States. In addition, we have no examples of these forms of take occurring in Mexico since the Mexican reintroduction program began in 2011. Arizona, New Mexico, and Mexico have regulatory provisions under which *C. l. baileyi* could be protected against overutilization if the subspecies were not protected by the Act. Due to the nonexistent or very low level of overutilization occurring, and the ability of the States and Mexico to regulate overutilization, we do not consider overutilization to be affecting *C. l. baileyi* now or in the future.

Factor C. Disease or Predation

A number of viral, fungal, and bacterial diseases and endo- and ectoparasites have been documented in gray wolf populations (Kreeger 2003, pp. 202–214). However, little research has been done specific to disease in *C. l. baileyi,* and little documentation exists of disease prevalence in wild wolves in the BRWRA population. We obtain the majority of our information on documented mortalities (from all sources, including disease) in the BRWRA from animals wearing radio collars. We may, therefore, underestimate the number of mortalities resulting from disease (*e.g.,* due to the number of uncollared wolves).

Typically, infectious diseases (such as viruses and bacteria) are transmitted through direct contact (*e.g.,* feces, urine, or saliva) with an infected animal, by aerosol routes, or by physical contact with inanimate objects (fomites). Parasites are infective through water, food sources, or direct contact. Wolves are able to tolerate a number of parasites, such as tapeworms or ticks, although occasionally such organisms can cause significant disease, or even be lethal (Kreeger 2003, p. 202).

C. l. baileyi are routinely vaccinated for rabies virus, distemper virus, parvovirus, parainfluenza virus, and adenovirus before release to the wild from captive facilities. In addition, common dewormers and external parasite treatments are administered. Wolves captured in the wild are vaccinated for the same diseases and administered dewormers and external parasite treatments. Kreeger (2003, pp. 208–211) describes the transmission route and effect of these diseases on gray wolves and can be referenced for general information. Recent rules for the Western Great Lakes and Northern Rocky Mountain gray wolf populations contain information from studies of disease occurrences in those geographic regions, and can also serve as a reference for a more comprehensive discussion of these (and other) diseases than that provided below (72 FR 6051, February 8, 2007; 73 FR 10513, February 27, 2008).

Rabies, caused by a rhabdovirus, is an infectious disease of the central nervous system typically transmitted by the bite of an infected animal. Rabies can spread between infected wolves in a population (*e.g.,* among and between packs), or between populations, resulting in severe population declines. Rabies is untreatable and leads to death. A rabies outbreak in and near the BRWRA began in 2006 in eastern Arizona and continued through 2009, with positive rabies diagnoses (fox variant) in both foxes and bobcats. No wolves in the Blue Range population were diagnosed with rabies during this outbreak (Arizona Department of Health Services 2012; New Mexico Department of Health 2011) or throughout the history of the reintroduction.

Canine distemper, caused by a paramyxovirus, is an infectious disease typically transmitted by aerosol routes or direct contact with urine, feces, and nasal exudates. Death from distemper is usually caused by neurological complications (*e.g.,* paralysis, seizures), or pneumonia. Distemper can cause high fatality rates, though survivors are occasionally documented in canine populations. Distemper virus may have been a contributing factor to high levels of pup mortality in Yellowstone National Park during several summers (Smith and Almberg 2007, p. 18). Although wolf populations are known to be exposed to the virus in the wild, mortality from distemper in wild *C. l. baileyi* is uncommon. However, we expect *C. l. baileyi* pups, in general, would be most susceptible to death from distemper virus at a time period prior to when they are captured, collared, and vaccinated. Therefore, our collared sample of pups may not be accurately documenting this source of mortality.

Distemper has been documented in one wild litter of wolves in the BRWRA. Two sibling *C. l. baileyi* pups brought to a captive-wolf-management facility in 2000 from the wild were diagnosed with distemper (indicating they were exposed to the disease in the wild) and died in captivity (AMOC and IFT 2005, p. TC–12). (Note: These captive deaths are not included in the BRWRA mortality statistics.) These are the only known mortalities due to distemper documented in relation to the current population (AMOC and IFT 2005, p. TC–12).

Canine parvovirus is an infectious disease caused by a virus that results in severe gastrointestinal and myocardial (heart disease) symptoms. Parvovirus is persistent in the environment and can be spread by direct contact or viral particles in the environment. Symptoms of an infected adult animal may include severe vomiting and diarrhea, resulting in death due to dehydration or electrolyte imbalance. Pups may die from myocardial (heart) disease if infected with canine parvovirus while in utero or soon after birth from cardiac arrhythmias. Although canine parvovirus has been documented in wild wolf populations, documented mortalities due to parvovirus are few; researchers hypothesize that parvovirus can be a survivable disease, although less so in pups. Parvovirus is thought to have slowed various stages of colonization and dispersal of wolves in the greater Minnesota population (Mech *et al.* 2008, pp. 832–834).

Parvovirus has been documented in one wild litter of wolves in the BRWRA. Three sibling *C. l. baileyi* pups were documented having, and then dying from, parvovirus in 1999: One pup died in an acclimation release pen in the BRWRA, indicating it had been exposed to the disease in the wild (AMOC and IFT 2005, p. TC–12). (This pup is the single disease-related mortality documented for the wild population. The other two pups, which also may have been exposed to the disease in the wild, were transferred to, and died at, a prerelease captive facility and are considered captive mortalities). Mortality from canine parvovirus has otherwise not been documented in the BRWRA population. However, we expect pups, in general, to be most susceptible to death from parvovirus prior to when they are captured, collared, and vaccinated. Therefore, our collared sample of pups may not be accurately documenting this source of mortality.

Three of 92 total documented wolf deaths in the BRWRA population between 1998 and 2012 have been attributed to disease: 1 to canine parvovirus, 1 to chronic bacterial pleuritis (bacterial infection around the lungs), and 1 to bacterial pneumonia. The pleuritis and pneumonia cases, though bacterial diseases, are likely both secondary to other unknown natural factors, rather than contagious, infectious diseases. Potential pup mortality caused by infectious disease may be poorly documented in the free-ranging population because these pups are too young to radio collar and thus difficult to detect or monitor. In addition, collared animals are vaccinated, which reduces the potential for mortality to occur among collared wolves.

We do not have evidence that disease was a significant factor in the decline of *C. l. baileyi* prior to its protection by the Act in the 1970's. However, we recognize that, in a general sense, disease has the potential to affect the size and growth rate of a wolf population and could have a negative impact on the BRWRA population if the active vaccination program were not in place. We also recognize that some diseases are more likely to spread as wolf-to-wolf contact increases (Kreeger 2003, pp. 202–214), thus the potential for disease outbreaks to occur may increase as the current population expands in numbers or density, although the effect on the population may be lower because a larger wolf population would be more likely to sustain the epidemic. Absent the protection of the Act, the potential for disease to affect the *C. l. baileyi* population would primarily depend on whether state wildlife agencies or other parties provided a similar level of vaccination to the population as that which we currently provide.

In addition to disease, we must also assess whether predation is affecting *C. l. baileyi* now or in the future under factor C. In our assessment of predation, we focus on wild predators as well as intentional human killing of wolves.

Wild predators do not regularly prey on wolves (Ballard *et al.* 2003, pp. 259–271). Although large prey may occasionally kill wolves during self-defense (Mech and Peterson 2003, p. 134), this occurrence is rare and not considered predation on the wolf. Between 1998 and December 31, 2012, three documented *C. l. baileyi* mortalities are attributed to predators (wolf, mountain lion, and unknown) (Service 2012, Mexican Wolf Blue Range Reintroduction Population Statistics). This may be an underestimate (*e.g.,* due to the number of uncollared wolves), but we still consider the overall incidence to be low based on the occurrences we have documented. Monitoring of Northern Rocky Mountain wolf populations demonstrates that wolf-to-wolf conflicts may be the biggest source of predation among gray wolves, but this typically occurs from territorial conflicts and has not occurred at a level sufficient to affect the viability of these populations (73 FR 10513; February 27, 2008). As the *C. l. baileyi* population begins to saturate available habitat, wolf mortalities resulting from territorial conflicts may become more prevalent but this type of mortality is not currently a concern. We do not foresee any change in the occurrence of wild predation on *C. l. baileyi* if the subspecies was not protected by the Act and, therefore, do not consider predation from wild predators to be affecting *C. l. baileyi.*

Illegal shooting of wolves has been the biggest single source of mortality since the reintroduction began in 1998, and the largest single source of mortality in 8 separate years between 1998 and December 31, 2012 (Service 2013: Mexican Wolf Blue Range Reintroduction Project Statistics). Out of 92 wild wolf mortalities documented between 1998 and 2012, 46 deaths are attributed to illegal shooting (50 percent of total mortalities). Documented illegal shootings have ranged from zero to seven per year between 1998 and December 2012, with one or more occurring every year with the exception of 1999. Illegal shooting has varied from no impact to the population (e.g., in 1999 when no illegal shootings occurred) to resulting in the known mortality of about 15 percent of the population in a given year (*e.g.,* in 2001). Forty-five percent of the illegal shootings have occurred during the last 4 to 5 years (as opposed to 55 percent in the first 14 years), signaling an increasing trend in this threat. Documented causes of illegal shooting in other gray wolf populations have included intentional killing and mistaken identity as a coyote or dog (Fuller *et al.* 2003, p. 181). We do not know the reason for each instance of illegal shooting of *C. l. baileyi* in the BRWRA.

We recognize that some wolf populations can maintain themselves despite sustained human-caused mortality rates of 17 to 48 percent ([Fuller *et al.* 2003 +/– 8 percent], pp. 184–185; Adams *et al.* 2008 [29 percent], p. 22; Creel and Rotella 2010 [22 percent], p. 5; Sparkman *et al.* 2011 [25 percent], p. 5; Gude *et al.* 2011 [48 percent], pp. 113–116; Vucetich and Carroll In Review [17 percent]) and that human-caused mortality sometimes replaces much of the wolf mortality in

a population that would have occurred naturally (e.g., due to intraspecific strife from territorial conflicts occurring in populations that have saturated available habitat) (Fuller *et al.* 2003, p. 186). However, for the BRWRA population, which is small and is not near carrying capacity, we think it is likely that the majority of illegal shootings function as additive mortality to the BRWRA population (that is, these mortalities are in addition to other mortalities that occur, rather than compensatory mortality where the deaths from illegal shooting would substitute for deaths that would occur naturally) (Murray *et al.* 2010, pp. 2515, 2522). Illegal shooting has a negative effect on the size and growth rate of the BRWRA population, but the effect of these mortalities on the population has likely been masked to some degree by the number of captive wolves released into the wild over the course of the reintroduction effort (92 wolves). Additionally, we are unable to document all mortalities to the population (*e.g.,* uncollared wolves) and, therefore, may be underestimating the number of mortalities caused by illegal shooting.

We expect that, absent the protection of the Act, killing of wolves would continue at current levels or, more likely, increase significantly because Federal penalties would not be in place to serve as a deterrent. *C. l. baileyi* could be protected from take by state regulations in Arizona and New Mexico and Federal regulations in Mexico, but state penalties are less severe than Federal penalties (see a description and discussion of this under factor D) and Federal protection in Mexico does not infer protection for wolves in the United States. Based on the continuous occurrence of illegal shooting taking place while *C. l. baileyi* is protected by the Act and the likelihood of increased occurrences of wolf shooting absent the protection of the Act, we consider illegal shooting of *C. l. baileyi* to be significant to the population. We further consider the threat of illegal shooting to *C. l. baileyi* in ''Combination of Factors/Focus on Cumulative Effects.'' which discusses this and other threats within the context of the small, geographically restricted and isolated BRWRA population.

In Mexico, illegal killing of wolves released to the wild in 2011–2012 has already been documented. Necropsy results confirm that four wolves released in Sonora, Mexico, in 2011 were killed by feeding on poison-laced carcasses within several months of their release (Service, our files). Whether the poison was intentionally targeting *C. l. baileyi* or was aimed more generally at predators, especially coyotes, is unknown. However, the poison used was an illegal substance, and investigation into these mortalities is ongoing. Illegal killing of four wolves has significantly hindered Mexico's initial efforts to establish a population; continued monitoring of the wolves Mexico releases in the future will be necessary to document whether these initial events were by chance or are indicative of a significant, ongoing threat to *C. l. baileyi* in Mexico.

Summary of Factor C

Based on the low incidence of disease and mortality from wild predators, we do not consider these factors to be significantly affecting *C. l. baileyi* nor do we expect them to in the future. Illegal shooting has been a continuous source of mortality to the BRWRA population since its inception, and we expect that if *C. l. baileyi* were not protected by the Act the number of shootings would increase substantially in the United States. Therefore, we consider illegal shooting to be significantly affecting *C. l. baileyi* in the United States. In Mexico, four wolves released in 2011 were illegally poisoned within months of their release to the wild, significantly hindering their reintroduction efforts. Illegal poisoning may affect the future *C. l. baileyi* population in Mexico significantly if such events continue.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to those existing and foreseeable threats, discussed under the other factors, that may affect the Mexican wolf. In this five-factor analysis, we consider illegal shooting (factor C), inbreeding (factor E), and small population size (factor E) to be significantly affecting *C. l. baileyi.* We address regulatory mechanisms related to illegal shooting, as no regulatory mechanisms are available to address inbreeding or small population size beyond the overarching protection of the Act.

As discussed in factor C, illegal killing (or ''take,'' as it is referred to in the Act) of *C. l. baileyi* currently occurs at significant levels in both the United States and Mexico. In the United States, illegal shooting of *C. l. baileyi* has been a continuous source of mortality over the course of the BRWRA reintroduction. In Mexico, illegal killing has resulted in a setback to the reestablishment of a population of wolves in the state of Sonora and the Western Sierra Madre.

The Act provides broad protection of listed species to prohibit and penalize illegal take but has not been sufficient to deter all illegal killing of *C. l. baileyi* in the United States. Section 9 of the Act (Prohibited acts) prohibits the take of any endangered species. Section 11 (Penalties and enforcement) provides civil penalties up to $25,000, and criminal penalties up to $50,000 and/or not more than 1 year in jail for knowing violations of section 9. Experimental populations, such as *C. l. baileyi* in the Mexican Wolf Experimental Population Area, are treated as if they are listed as a threatened species, which limits criminal penalties to up to $25,000 and imprisonment for not more than 6 months.

All cases of suspected illegal shooting of *C. l. baileyi* in the United States are investigated by the Service's Office of Law Enforcement Special Agents. On-the-ground personnel involved in preventing illegal take of *C. l. baileyi* and apprehending those who commit illegal take include Service Special Agents, AGFD Game Wardens, New Mexico Department of Fish and Game Conservation Officers, U.S. Forest Service special agents and Law Enforcement Officers (LEOs), San Carlos Apache Tribe LEOs, and White Mountain Apache Tribe LEOs. Specific actions to reduce illegal take include targeted patrols during high-traffic periods (hunting seasons and holidays); the ability to restrict human activities within a 1-mi (1.6-km) radius of release pens, active dens, and rendezvous sites; proactive removal of road kills to reduce the potential of wolves scavenging, which may result in vehicular collision and illegal take of *C. l. baileyi;* and monetary rewards for information that leads to a conviction for unlawful take of the subspecies. Of the 43 wolf mortalities classified as illegal shooting between 1998 and 2011, only 4 positive convictions have been made.

If *C. l. baileyi* were not protected by the Act, it would be protected by state regulations in Arizona and New Mexico, and by Federal law in Mexico. In Arizona, the (Mexican) gray wolf is managed as Wildlife of Special Concern (Arizona Game and Fish Commission Rules, Article 4, R12–4–401) and is identified as a Species of Greatest Conservation Need (Tier 1a, endangered) (Species of Greatest Conservation Need 2006, pending). Species with these designations are managed under the Nongame and Endangered Wildlife Management program by the AGFD. This program seeks to protect, restore, preserve, and maintain such species. These provisions, i.e., the Species of Greatest

Conservation Need list and the Wildlife of Special Concern list, are nonregulatory. However, Arizona Revised Statute Title 17 establishes AGFD with authority to regulate take of wildlife in the state of Arizona. ''Take'' (to pursue, shoot, hunt, trap, kill, capture, snare, or net) of wildlife in Arizona on lands under the authority of the Arizona Game and Fish Commission is prohibited, unless a provision (*e.g.,* Commission Order, special rule, permit) is made to allow take. Penalties for illegal take or possession of wildlife can include revocation of hunting license or civil penalties up to $8,000 depending on its classification as established through annual regulations.

In New Mexico, *C. l. baileyi* is listed as endangered (Wildlife Conservation Act, pp. 17–2–37 through 17–2–46 NMSA 1978). Pursuant to the Wildlife Conservation Act, it is unlawful to take, possess, transport, export, process, sell, or offer for sale or ship any state or Federal endangered species (17–2–41 NMSA). Penalties for violating the provisions of 17–2–41 (endangered species) may include fines of up to $1,000 or imprisonment.

In Mexico, several legal provisions provide regulatory protection for *C. l. baileyi. C. l. baileyi* is classified as ''E'' (''probably extinct in the wild'') by the Norma Oficial Mexicana NOM–059–SEMARNAT–2010, ''Protección ambiental–Especies nativas de México de flora y fauna silvestres–Categorías de riesgo y especificaciones para su inclusión, exclusión o cambio–Lista de especies en riesgo'' (NOM–059–SEMARNAT–2010), which is a list of species at risk. This regulation does not directly provide protection of the listed species; rather it includes the criteria for downlisting, delisting, or including a species or population on the list. The General Wildlife Law (''Ley General de Vida Silvestre,'' 2000, as amended), however, has varying restrictions depending on risk status that apply only to species that are listed in the NOM–059–SEMARNAT–2010.

Mexico's Federal Penal Law (''Código Penal Federal'' published originally in 1931) Article 420 assigns a fine of 300 to 3,000 days of current wage and up to 9 years prison to those who threaten the viability of a species or population, transport a species at risk, or damage a specimen of a species at risk. Administrative fines are imposed by an administrative authority (PROFEPA, ''Procuraduria Federal de Proteccion al Ambiente,'' or the Attorney General for Environmental Protection) and are calculated on the basis of minimum wage in Mexico City ($62.33 daily Mexican pesos). The fines established in the General Wildlife Law range from 1,246.60 to 311,650 Mexican pesos (approximately U.S. $98 to U.S. $24,400) for the four minor infractions, to a range of 3,116 to 3,116,500 Mexican pesos (approximately U.S. $244 to U.S. $244,400) for the other offenses, including the killing of a wolf. Penal fines are imposed by a judge and are calculated on the basis of the current daily wage of the offender including all his income.

We have no reason to believe that, absent the Act's protections, shooting of *C. l. baileyi* in the United States would cease. Rather, we believe that shooting of *C. l. baileyi* could increase, as state penalties (assuming wolves were granted protected status by the States) would be less severe than current Federal penalties under the Act. Thus, existing State penalties in Arizona and New Mexico would not serve as an adequate deterrent to illegal take. The illegal killing of four wolves in Mexico (see factor C) in 2011–2012 suggests that Federal penalties in Mexico may not be an adequate deterrent to illegal take there, although Federal fines in Mexico are potentially higher than those available under the Act in the United States. The adequacy of these penalties to address overutilization (factor B) is not an issue, as instances of overutilization do not occur or are exceedingly rare and, therefore, do not significantly affect *C. l. baileyi.*

Summary of Factor D

Regulatory mechanisms to prohibit and penalize illegal killing exist under the Act, but illegal shooting of wild *C. l. baileyi* in the United States persists. We believe that absent the protection of the Act, killing of wolves in the United States would increase, potentially drastically, because state penalties are less severe than current Federal penalties. The recent poisoning of several wolves reintroduced to Mexico suggests that illegal killing may be a challenge for that country's reintroduction efforts as well. Thus, in the absence of the Act, existing regulatory mechanisms will not act as an effective deterrent to the illegal taking of wolves, and this inadequacy will significantly affect *C. l. baileyi.*

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

We document sources of mortality in six categories as part of our ongoing monitoring of *C. l. baileyi* in the BRWRA: Illegal Shooting, Vehicle Collision, Natural, Other, Unknown, and Awaiting Necropsy. In factor C, we assessed illegal shooting in the United States, disease, and predation (our category ''Natural'' includes disease and predation). In factor E, we assess the impacts to *C. l. baileyi* from the remaining sources of mortality—Vehicle Collision, Natural, Other, and Unknown. As stated in our discussions of disease, predation, and illegal shooting, we may not be documenting all mortalities to the population because mortality of uncollared wolves is not typically detected; similarly, we may underestimate the number of mortalities attributed to any one cause discussed below. We also assess human intolerance of wolves, land-use conflicts, hybridization, inbreeding, climate change, and small population size.

Our category of ''Natural'' causes of mortality includes a number of mortality sources, such as predation, starvation, interspecific strife, lightning strikes, and disease. Because we have documented three or fewer natural mortalities per year since 1998, we do not consider natural mortalities to be occurring at a level, individually or collectively, that significantly affects *C. l. baileyi* (and see factor C for additional discussion of disease and predation) (Service 2012: Mexican Wolf Blue Range Reintroduction Project Statistics). Therefore, we do not further discuss these ''Natural'' causes of mortality. Similarly, mortalities caused by ''Other'' source of mortality, which also includes several sources of mortality (capture-related mortalities, public-trap mortality, legal public shooting, etc.) and ''Unknown'' causes are occurring at very low levels (4 of 88 mortalities (1 mortality or fewer per year), and 9 of 88 mortalities (2 mortalities or fewer per year), respectively) and are not occurring at a level that significantly affects *C. l. baileyi.*

Vehicular collision has accounted for 15 percent of *C. l. baileyi* mortalities from 1998 to December 31, 2012 (14 out of 92 total documented *C. l. baileyi* deaths) (Service 2012: Mexican Wolf Blue Range Reintroduction Project Statistics). Thirteen out of 14 wolf mortalities attributed to vehicular collision throughout the course of the reintroduction (through December 31, 2012) occurred along paved U.S. or State highways; one wolf died on a Forest Service dirt road as a result of vehicle collision. Five of the vehicle strikes occurred outside of the BRWRA boundary. The number of vehicular-related mortalities, which has ranged from zero to two per year, with the exception of a high of four vehicular-related wolf deaths in 2003, has not shown a trend (increasing or decreasing) over time. Given the occurrence of these

mortalities on highways, it is likely that these collisions were accidental events that occurred from vehicles traveling at relatively high speeds.

Roads, both paved and unpaved, in the BRWRA primarily exist to support forest management, livestock grazing, recreational access, resource protection, and transport of forest products on the Gila and Apache National Forests (Service 1996, pp. 3–13). Different types of roads present different threats to wolves—paved roads with higher speed limits present more risk of wolf mortality due to vehicular collision than unpaved roads with lower speed limit, but both roads and trails can provide access into wolf habitat. National Forests contain various road types (paved, unpaved, opened, closed, etc.) and trails (motorized, nonmotorized), but are generally considered to be driven at relatively low speeds and have relatively low traffic volume. Non-Forest Service roads (e.g., highways and other paved roads) are limited within the BRWRA, and include portions of U.S Highways 191 and 180, and State Highways 260, 152, 90, 78, 32, and 12. U.S. highway 60 runs immediately to the north of this area.

Road density in the BRWRA was estimated at 0.8 mi road per mi^2 (1.28 km road per km^2) prior to the reintroduction (Johnson *et al.* 1992, p. 48). The USDA Forest Service Southwest Region recently calculated road densities for the Gila and Apache-Sitgreaves National Forests during analysis of alternatives to designate a system of roads, trails, and areas designated for motor vehicle use in compliance with the Travel Management Rule. They did not assess road use in terms of a baseline of traffic volume or projections of traffic volume for the future. Both the Gila and Apache-Sitgreaves National Forests continue to have an appropriately low density of roads for the wolf reintroduction effort in the BRWRA, with no plans to increase road density in either Forest-road density in the Apache portion of the Apache-Sitgreaves National Forest is estimated at 0.94 mi road per mi^2 for all roads (1.5 km road per km^2) (open, closed, decommissioned) and motorized trails, or 0.43 mi road per mi^2 (0.69 km road per km^2) for open roads and motorized trails (USDA 2010a, p. 102); road density in the Gila National Forest is estimated at 1.02 mi per mi^2 (1.64 km per km^2) for open and closed (but not decommissioned) roads and motorized trails (an overall average of 0.99 mi per mi^2 (1.59 km per km^2) (USDA 2010b, p. 149). It has been recommended that areas targeted for wolf recovery have low road density of not more than 1 linear mile of road per square mile of area (1.6 linear km of road per 2.56 square kilometers; Thiel 1985, pp. 406–407), particularly during colonization of an area (Fritts *et al.* 2003, p. 301).

In summary, road density in the BRWRA remains within recommendations for wolf habitat and *C. l. baileyi* reintroduction efforts. Mortalities from vehicular collision show a strong pattern of occurrence on high-speed paved State or U.S. Highways rather than on Forest Service roads, and are occurring at relatively low levels (two or fewer mortalities per year, with the exception of 1 year in which four mortalities were attributed to vehicular collision). In absence of Federal protection, we expect that incidence of wolf-vehicular collision would continue at similar levels, due to the accidental nature of these incidents. At this level, with or without the protections of the Act, we conclude that vehicular collisions, considered in isolation of other sources of mortality, are not significantly affecting *C. l. baileyi.* We further consider the significance of these mortalities in Combination of Factors/Focus on Cumulative Effects.

Human Intolerance—Human attitudes have long been recognized as a significant factor in the success of gray wolf recovery efforts to the degree that it has been suggested that recovery may depend more on human tolerance than habitat restoration (see Boitani 2003, p. 339, Fritts *et al.* 2003; Mech 1995). In the Southwest, extremes of public opinion vary between those who strongly support or oppose the recovery effort. Support stems from such feelings as an appreciation of the wolf as an important part of nature and an interest in endangered species restoration, while opposition may stem from negative social or economic consequences of wolf reintroduction, general fear and dislike of wolves, or Federal land-use conflicts.

Public polling data in Arizona and New Mexico shows that most respondents have positive feelings about wolves and support the reintroduction of *C. l. baileyi* to public land (Research and Polling 2008a, p. 6, Research and Polling 2008b, p. 6). These polls targeted people statewide in locations outside of the reintroduction area, and thus provide an indication of regional support.

Meanwhile, we suspect that human intolerance of wolves is resulting in some of the illegal shooting occurring in the BRWRA. Without additional information, we are unable to confirm whether, or the degree to which, disregard for or opposition to the reintroduction project is a causative factor in illegal shootings. Similarly, in Mexico, we do not yet know whether the illegal poisoning of four reintroduced *C. l. baileyi* was purposeful and stemmed from opposition to the reintroduction or rather was targeted more generally at (other) predators. We recognize that humans can be very effective at extirpating wolf populations if human-caused mortality rates continue at high levels over time, as demonstrated by the complete elimination of wolves across the Southwest and Mexico prior to the protection of the Act; at this time, however, we do not have enough information to determine whether, or the degree to which, human intolerance may pose a threat to *C. l. baileyi.*

Land-Use Conflicts—Historically, land-use conflict between wolves and livestock producers was a primary cause of the wolf's endangerment due to human killing of wolves that depredated livestock. At the outset of the reintroduction effort, the amount of permitted grazing in the recovery area was identified as a possible source of public conflict for the project due to the potential for wolves to depredate on livestock (Service 1996, p. 4–4). Service removal of wolves due to livestock depredation has occurred in 9 out of 15 years of the reintroduction effort, reaching a high of 16 and 19 removals in 2006 and 2007, respectively (Service 2012 Mexican Wolf Blue Range Project Statistics). The Service, other state, federal, and tribal agencies, private parties, and livestock producers have increased proactive efforts (*e.g.,* hazing, fencing, fladry, range riders) to minimize depredations in recent years, resulting in fewer removals from 2008 to 2012 than in the first 10 years of the program. Since 2007, we have removed only one wolf from the BRWRA population due to confirmed livestock depredation, which occurred in 2012 (Service BRWRA Monthly Project Updates, October 2012, *http://www.fws.gov/southwest/es/mexicanwolf/CEBRWRA.cfm*).

The Service is committed to actively managing depredating wolves to improve human tolerance in the BRWRA, while recognizing that management removals must be part of an overall management scheme that will promote the growth of the nonessential experimental population. Thus these removals are critical to ameliorating some conflicts that result from the presence of both wolves and livestock in the BRWRA. We are also working to establish a Mexican Wolf Livestock Interdiction Fund to generate long-term

funding for prolonged financial support to livestock operators within the framework of cooperative conservation and recovery. Our depredation-response removals, proactive efforts to reduce conflict, and depredation-compensation funding are critical components of our overall management approach to establish a population of at least 100 wild wolves. Based on these efforts, we conclude that land-use conflicts are not significantly affecting *C. l. baileyi.* In absence of protection by the Act, land-use conflicts would still occur in areas where wolves and livestock coexist. However, because *C. l. baileyi* is protected by state law, we expect that livestock producers and state agencies would continue to employ effective practices of hazing or other active management measures to reduce the likelihood of occurrence of depredation incidents. Therefore, we conclude that land-use conflicts are unlikely to significantly affect *C. l. baileyi* if it was not protected by the Act.

Hybridization—Hybridization between wolves and other canids can pose a significant challenge to recovery programs (*e.g.,* the red wolf recovery program) (Service 2007, pp. 10–11) because species in *Canis* can interbreed and produce viable offspring. In the BRWRA, hybridization is a rare event. Three confirmed hybridization events between *C. l. baileyi* and dogs have been documented since the reintroduction project began in 1998. In the first two cases, hybrid litters were humanely euthanized (Service 2002, p. 17, Service 2005:16.) In the third case, four of five pups were humanely euthanized; the fifth pup, previously observed by project personnel but not captured, has not been located and its status is unknown (BRWRA Monthly Project Updates, June 24, 2011, *http://www.fws.gov/southwest/es/mexicanwolf/CEBRWRA.cfm*). No hybridization between *C. l. baileyi* and coyotes has been confirmed through our genetic monitoring of coyotes, wolves, and dogs that are captured in the wild.

Our response to hybridization events has negated any potential impact to the BRWRA population from these events (*e.g.,* effects to the genetic integrity of the population). Moreover, the likelihood of hybrid animals surviving, or having detectable impacts on wolf population genetics or viability, is low due to aspects of wolf sociality and fertility cycles (Mengel 1971, p. 334; Vila and Wayne 1999, pp. 195–199).

We do not foresee any change in the likelihood of hybridization events occurring, or the potential effect of hybridization events, if *C. l. baileyi* was not protected by the Act; that is, hybridization events and effects would continue to be rare. Therefore, we conclude that hybridization is not significantly affecting the *C. l. baileyi* population now nor is it likely to do so or in the future.

Inbreeding, Loss of Heterozygosity, and Loss of Adaptive Potential—Canis lupus baileyi has pronounced genetic challenges resulting from an ongoing and severe genetic bottleneck (that is, a reduction in a population's size to a small number for at least one generation) caused by its near extirpation in the wild and the small number of founders upon which the captive population was established. These challenges include inbreeding (mating of close relatives), loss of heterozygosity (a decrease in the proportion of individuals in a population that have two different alleles for a specific gene), and loss of adaptive potential, three distinct but interrelated phenomena.

When a population enters a genetic bottleneck the strength of genetic drift (random changes in gene frequencies in a population) is increased and the effectiveness of natural selection is decreased. As a result, formerly uncommon alleles may drift to higher frequencies and become fixed (the only variant that exists), even if they have deleterious effects on the individuals that carry them. Conversely, beneficial alleles may become less common and even be lost entirely from the population. In general, rare alleles are lost quickly from populations experiencing bottlenecks. Heterozygosity is lost much more slowly, but the losses may continue until long after the population has grown to large size (Nei *et al.* 1975, entire). The extent of allele and heterozygosity loss is determined by the depth (the degree of population contraction) and duration of a bottleneck. Heterozygosity is important because it provides adaptive potential and can mask (prevent the negative effects of) deleterious alleles.

Inbreeding can occur in any population, but is most likely to occur in small populations due to limited choice of mates. The potential for inbreeding to negatively affect the captive and reintroduced *C. l. baileyi* populations has been a topic of concern for over a decade (Parsons 1996, pp. 113–114; Hedrick *et al.* 1997, pp. 65–68). Inbreeding affects traits that reduce population viability, such as reproduction (Kalinowski *et al.* 1999, pp. 1371–1377; Asa *et al.* 2007, pp. 326–333; Fredrickson *et al.* 2007, pp. 2365–2371), survival (Allendorf and Ryman 2002, pp. 50–85), and disease resistance (Hedrick *et al.* 2003, pp. 909–913). Inbreeding is significant because it reduces heterozygosity and increases homozygosity (having two of the same alleles) throughout the genome.

Inbreeding depression is thought to be primarily a result of the full expression of deleterious alleles that have become homozygous as a result of inbreeding (Charlesworth and Willis 2009, entire). In other words, rare deleterious alleles, or gene variants that have deleterious effects such as deformities, are more likely to be inherited and expressed in an offspring of two related individuals than of unrelated individuals (that is, the offspring may be homozygous). Theory suggests that although lethal alleles (those that result in the death of individuals with two copies) may be purged or reduced in frequency in small populations (Hedrick 1994, pp. 363–372), many other mildly and moderately deleterious alleles are likely to become fixed in the population (homozygous in all individuals) with little or no reduction in the overall genetic load (amount of lethal alleles) (Whitlock *et al.* 2000, pp. 452–457). In addition, there is little empirical evidence in the scientific literature that purging reduces the genetic load in small populations.

As previously described, *C. l. baileyi* experienced a rapid population decline during the 1900s, as predator eradication programs sought to eliminate wolves from the landscape. Subsequently, a captive-breeding program was initiated. The McBride lineage was founded with three wolves in 1980. The Ghost Ranch and Aragon lineages were each founded by single pairs in 1961 and around 1976, respectively. These lineages were managed separately until the mid-1990s, by which time all three lineages had become strongly inbred. Inbreeding coefficients (f) (a measure of how genetically close two individuals are) for McBride pups born in the mid-1990s averaged about 0.23—similar to inbreeding levels for offspring from outbred full sibling or parent-offspring pairs ($f = 0.25$). Inbreeding coefficients for Aragon and Ghost Ranch lineage pups born in the mid-1990s were higher, averaging 0.33 for Aragon pups and 0.64 for Ghost Ranch pups (Hedrick *et al.* 1997, pp. 47–69).

Of the three lineages, only the McBride lineage was originally managed as a captive breeding program to aid in the conservation of *C. l. baileyi.* However, out of concern for the low number of founders and rapid inbreeding accumulation in the McBride lineage, the decision was made to merge the Aragon and Ghost Ranch lineages into the McBride lineage after genetic

testing confirmed that this approach could improve the gene diversity of the captive population (Garcia-Moreno *et al.* 1996, pp. 376–389). Consequently, pairings (for mating) between McBride wolves and Aragon wolves and between McBride and Ghost Ranch wolves began in 1995 with the first generation (F_1) of these pups born in 1997. Although the parents of these (F_1) wolves were strongly inbred, the offspring were expected to be free of inbreeding and free of the inbreeding depression. Forty-seven F_1 wolves were produced from 1997 to 2002. Upon reaching maturity, the F_1 wolves were paired among themselves, backcrossed with pure McBride wolves, and paired with the descendants of F_1 wolves called ''cross-lineage'' wolves to maintain gene diversity and reduce inbreeding in the captive population.

Although there was slight statistical evidence of inbreeding depression among captive wolves of the McBride and Ghost Ranch lineages, the outbred F_1 wolves proved to have far greater reproductive fitness than contemporary McBride and Ghost Ranch wolves (which were strongly inbred) as well as minimally inbred wolves from early in the McBride and Ghost Ranch pedigrees. Pairings between F_1 wolves were 89 percent more likely to produce at least one live pup, and mean litter sizes for F_1 x F_1 pairs were more than twice as large as contemporary McBride pairings (7.5 vs 3.6 pups per litter; Fredrickson *et al.* 2007, pp. 2365–2371). The large increases in reproductive fitness among F_1 wolves suggested that the McBride and Ghost Ranch lineages were suffering from a large fixed genetic load of deleterious alleles. In other words, McBride and Ghost Ranch wolves had accumulated identical copies of gene variants that had negative effects on their health or reproductive success at many locations (loci) throughout their genome. In addition, pups born to cross-lineage dams (mother wolves) had up to 21 percent higher survival rates to 180 days than contemporary McBride lineage pups (Fredrickson *et al.* 2007, pp. 2365–2371).

Although the F_1 wolves had high reproductive fitness, strong inbreeding depression among cross-lineage wolves in captivity has been documented. Inbreeding levels of both dams and sires (father wolves) were found to negatively affect the probability that a pair would produce at least one live pup. For example, the estimated probabilities of a pair producing at least one live pup dropped from 0.96 for F1 × F1 pairs (with no inbreeding in the dam and sire) to 0.40 for pairs with a mean inbreeding coefficient of 0.15 (Fredrickson *et al.* 2007, pp. 2365–2371). Consistent with the finding that inbreeding levels of sires affected the probability of producing at least one live pup, Asa *et al.* (2007, pp. 326–333) found that two measures of semen quality, sperm cell morphology and motility of sperm cells, declined significantly as inbreeding levels increased. Among pairs that produced at least one live pup, increases of 0.1 in the inbreeding coefficients of both the dam and pups was estimated to reduce litter size by 2.8 pups. Inbreeding levels of the pups were found to have about twice the detrimental effect as inbreeding in the dam, suggesting that inbreeding accumulation in pups was causing pups to die prior to being born (Fredrickson *et al.* 2007, pp. 2365–2371).

As of October 2012, the captive population of Mexican wolves consisted of 258 wolves, of which 33 are reproductively compromised or have very high inbreeding coefficients, leaving 225 wolves as the managed population (Siminski and Spevak 2012). The age structure of the population, however, is heavily skewed, with wolves 7 years old and older comprising about 62 percent of the population—meaning that most of the population is comprised of old wolves who will die within a few years. This age structure has resulted from the high reproductive output of the F_1 wolves and their descendants in captivity, the combination of few releases of captive-born wolves to the wild in recent years, removal of wolves from the wild population to captivity, and limited pen space for pairings, and means that additional gene diversity will be lost as the captive population continues to age.

The SSP strives to minimize and slow the loss of gene diversity of the captive population but (due to the limited number of founders) cannot increase it. As of 2012, the gene diversity of the captive program was 83.37 percent of the founding population, which falls below the average mammal SSP (93 percent) and below the recognized SSP standard to maintain 90 percent of the founding population diversity. Below 90 percent, the SSP states that reproduction may be compromised by low birth weight, smaller litter sizes, and related issues.

Representation of the Aragon and Ghost Range lineages in 2012 was 18.80 percent and 17.65 percent, respectively (Siminski and Spevak 2012, p. 6). More specifically, the representation of the seven founders is very unequal in the captive population, ranging from about 30 percent for the McBride founding female to 4 percent for the Ghost Ranch founding male. Unequal founder contributions lead to faster inbreeding accumulation and loss of founder alleles. The captive population is estimated to retain only 3.01 founder genome equivalents, suggesting that more than half of the alleles (gene variants) from the seven founders have been lost from the population.

The genetically effective population size (N_e) of the captive population is estimated to be 20 wolves and the ratio of effective to census size (Ne/N; that is, the number of breeding animals as a percentage of the overall population size) is estimated to be 0.0846 (Siminski and Spevak 2012, p. 7). The genetically effective population size is defined as the size of an ideal population that would result in the rate of inbreeding accumulation or heterozygosity loss as the population being considered. The effective sizes of populations are almost always smaller than census sizes of populations. A rule of thumb for conservation of small populations holds N_e should be maintained above 50 to prevent substantial inbreeding accumulation, and that small populations should be grown quickly to much larger sizes ($N_e \geq 500$) to maintain evolutionary potential (Franklin 1980, entire). The low ratio of effective to census population sizes in the captive population reflects the limitations on breeding (due to a lack of cage space) over the last several years, while the low effective population size is another indicator of the potential for inbreeding and loss of heterozygosity.

The gene diversity of the reintroduced population of *C. l. baileyi* can only be as good as the diversity of the captive population from which it is established. Based on information available on July 11, 2012, the genetic diversity of the wild population was 74.99 percent of the founding population (Siminski and Spevak 2012, pp. 6–7), with 4.97 percent and 13.80 percent representation of Aragon and Ghost Range lineages, respectively. Although *C. l. baileyi* (in the reintroduced population) reached an all-time high population size in 2012 (minimum estimate of 75 wolves), it is currently a poor representation of the genetic variation remaining in the captive population. Founder representation in the reintroduced population is more strongly skewed than in the captive population. Mean inbreeding levels are 61 percent greater (0.1924 versus 0.1197), and founder genome equivalents are 33 percent lower (2 vs. 3.01) than in the captive population. In addition, the estimated relatedness of *C. l. baileyi* in the reintroduced population is on average 50 percent greater than

that in the captive population (population mean kinship: 0.2501 vs. 0.1663; Siminski & Spevak 2012, p. 8). This suggests that *C. l. baileyi* in the reintroduced population are on average as related to one another as outbred full siblings are related to each other. Without substantial management action to improve the genetic composition of the population, inbreeding will accumulate and heterozygosity and alleles will be lost much faster than in the captive population.

There is evidence of strong inbreeding depression in the reintroduced population. Fredrickson et al. (2007, pp. 2365–2371) estimated that the mean observed litter size (4.8 pups for pairs producing pups with no inbreeding) was reduced on average by 0.8 pups for each 0.1 increase in the inbreeding coefficient of the pups. For pairs producing pups with inbreeding coefficients of 0.20, the mean litter size was estimated to be 3.2 pups. Computer simulations of the Blue Range population incorporating the Mexican wolf pedigree suggest that this level of inbreeding depression may substantially reduce the viability of the population (Carroll *et al. in prep;* Fredrickson *et al. in prep*).

The recent history of Mexican wolves can be characterized as a severe genetic bottleneck that began no later than the founding of the Ghost Ranch lineage in 1960. The founding of the three lineages along with their initial isolation likely resulted in the loss of most rare alleles and perhaps even some moderately common alleles. Heterozygosity loss was accelerated as a result of rapid inbreeding accumulation. The merging of the captive lineages likely slowed the loss of alleles and heterozygosity, but did not end it. The consequences to Mexican wolves of the current genetic bottleneck will be future populations that have reduced fitness (for example, smaller litter sizes, lower pup survival) due to inbreeding accumulation and the full expression of deleterious alleles. The loss of alleles will limit the ability of future Mexican wolf populations to adapt to environmental challenges.

Based on data from the SSP documenting loss of genetic variation, research documenting viability-related inbreeding effects in *C. l. baileyi,* and our awareness that the wild population is at risk of inbreeding due to its small size, we conclude that inbreeding, and loss of heterozygosity, and loss of adaptive potential are significantly affecting *C. l. baileyi* and are likely to continue to do so in the future. If *C. l. baileyi* was not protected by the Act, these risks would remain, and may increase if states or other parties did not actively promote genetic diversity in the reintroduced population by releasing wolves with appropriate genetic ancestry to the population.

Small Population Size—Rarity may affect the viability (likelihood of extinction or persistence over a given time period) of a species depending on the species' biological characteristics and threats acting upon it. We consider several types of information to determine whether small population size is affecting *C. l. baileyi,* including historical conditions, consideration of stochastic (or, chance) events, theoretical recommendations of population viability, and applied population-viability models specific to *C. l. baileyi.* We discuss three types of stochastic events—demographic, environmental, and catastrophic—as the fourth type of stochastic event—genetic—is addressed under the subheading of Inbreeding. We further discuss the significance of small population size in Combination of Factors/Focus on Cumulative Effects, below.

Historical abundance and distribution serve as a qualitative reference point against which to assess the size of the current population. Prior to European colonization of North America, *C. l. baileyi* were geographically widespread throughout numerous populations across the southwestern United States and Mexico. Although we do not have definitive estimates of historical abundance, we can deduce from gray wolf population estimates (Leonard *et al.* 2005, p. 15), trapping records, and anecdotal information that *C. l. baileyi* numbered in the thousands across its range in the United States and Mexico. We, therefore, recognize that the current size and geographic distribution of *C. l. baileyi* (approximately 75 wolves in a single population occurring in a fraction of its historical range) represents a substantial contraction from its historical (pre-1900s) abundance and distribution.

Scientific theory and practice generally agree that a species represented by a small population faces a higher risk of extinction (or a lower probability of population persistence) than a species that is widely and abundantly distributed (Goodman 1987, pp. 11–31; Pimm *et al.* 1988, p. 757). One of the primary causes of this susceptibility to extinction is the sensitivity of small populations to random demographic events (Shaffer 1987, pp. 69–86, Caughley 1994, p. 217). In small populations, even those that are growing, random changes in average birth or survival rates could cause a population decline that would result in extinction. This phenomenon is referred to as demographic stochasticity. As a population grows larger and individual events tend to average out, the population becomes less susceptible to extinction from demographic stochasticity and is more likely to persist.

At its current size of a minimum of 75 wolves, and even at the current population target of at least 100 wild wolves, the BRWRA population is, by demographic measures, considered small (Shaffer 1987, p. 73; Boyce 1992, p. 487; Mills 2007, p. 101; Service 2010, pp. 63–68) and has a low probability of persistence. The viability of the population when it reaches its target of at least 100 wolves remains unquantified, although qualitatively this target is significantly below estimates of viability appearing in the scientific literature and gray wolf recovery plans, which suggest hundreds to over a thousand wolves are necessary for long-term persistence in the wild (Service 2010, pp. 63–68).

Two *C. l. baileyi* population-viability analyses were initiated subsequent to the development of the 1982 Mexican Wolf Recovery Plan but prior to the BRWRA reintroduction (Seal 1990 entire, IUCN 1996 entire, Service 2010, p. 66), although neither was completed. Population-viability modeling is currently being conducted as part of the development of draft recovery criteria; these results will be available to the public when the draft recovery plan is published. However, initial results continue to strongly support our understanding that the wild population currently faces a high degree of extinction risk simply due to its current size. Given our understanding of the high extinction risk of the current size of the population and our awareness that this rarity is not the typical abundance and distribution pattern for *C. l. baileyi,* we consider the small population size of the BRWRA to be significantly affecting *C. l. baileyi.*

Absent the protection of the Act, the extinction risks associated with small population size would remain, and may increase if state(s) or other parties did not actively support the reintroduced population through appropriate management measures.

The vulnerability of a small population to extinction can also be driven by the population's vulnerability to decline or extinction due to stochastic environmental or catastrophic events (Goodman 1987, pp. 11–31; Pimm *et al.* 1988, p. 757). While we consider these types of events to be critically important considerations in our recovery efforts for the species, we

have not identified any single environmental event (i.e., disease, climate change (below)) or catastrophic event (wildfire) to be significantly affecting *C. l. baileyi* based on our current information and management practices (i.e., vaccinations, monitoring). However, we reconsider the concept of vulnerability to these events below, in Combination of Factors/Focus on Cumulative Effects.

Climate Change—Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the IPCC. ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). In our analyses, we use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Throughout their circumpolar distribution, gray wolves persist in a variety of ecosystems with temperatures ranging from −70 to 120 degrees Farenheit (−56 to 48 degrees Celcius) with wide ranging prey type and availability (Mech and Boitani 2003, p. xv). *C. l. baileyi* historically inhabited and still inhabit a range of southwestern ecotypes subsisting on large ungulate prey as well as small mammals. Due to this plasticity and lack of reliance on microhabit, we do not consider *C. l. baileyi* to be highly vulnerable or sensitive to climate change (Dawson *et. al* 2011, p. 53). Similarly, elk, the primary prey of *C. l. baileyi* in the BRWRA, are known to be habitat generalists due to their association with wide variation in environmental conditions (Kuck 1999, p. 1). We recognize that climate change may have detectable impacts on the ecosystems of the Southwest that affect *C. l. baileyi.* For example, to the degree that warmer temperatures and increased aridity or decreased water availability (Dai 2011, p. 58) limit prey abundance, we would also expect decreased wolf densities. However, both wolves and their prey are species that exhibit reasonable adaptive capacity (Dawson *et al.* 2011, p. 53) such that they could shift habitats in response to changing conditions or potentially persist in place. Therefore, based on the relatively low vulnerability and sensitivity of *C. l. baileyi* to changes in climate, and on the relatively high adaptive capacity of the subspecies to respond to changes, we conclude that climate change is not significantly affecting *C. l. baileyi* at the current time nor do we expect it to do so in the future. The effects of climate change on *C. l. baileyi* would not change if it was not protected by the Act.

Summary of Factor E

Inbreeding, loss of adaptive potential, loss of heterozygosity, and small population size are significantly affecting *C. l. baileyi.* Inbreeding and loss of heterozygosity has the potential to affect viability-related fitness traits in *C. l. baileyi* and therefore to affect the persistence of the subspecies in the wild in the near term; loss of genetic variation significantly affects the likelihood of persistence of *C. l. baileyi* over longer time frames. Absent the protection of the Act, inbreeding, loss of heterozygosity, and loss of adaptive potential would persist and possibly increase depending on whether the states or other parties undertook active promotion of the maintenance of gene diversity.

The small population size of the BRWRA population results in a high risk of extinction due to the susceptibility of the population to stochastic demographic events. Neither the current population (approximately 75 wolves), nor the population target of at least 100 wild wolves, is a sufficient size to ensure persistence into the future. Absent the protection of the Act, small population size would continue to significantly affect *C. l. baileyi,* or may increase if states or other parties did not actively support the reintroduced population through appropriate management measures.

Vehicular collisions, human intolerance, land-use conflicts, hybridization, and climate change are not significantly affecting *C. l. baileyi,* nor are they expected to do so in the near future.

Combination of Factors/Focus on Cumulative Effects

In the preceding review of the five factors, we find that *C. l. baileyi* is most significantly affected by illegal killing, inbreeding, loss of heterozygosity, loss of adaptive potential, and small population size. In absence of the Act's protections, these issues would continue to affect *C. l. baileyi,* and would likely increase in frequency or severity. We also identify several potential sources of mortality or risk (disease, vehicular collision, wildfire, hybridization, etc.) that we do not currently consider to be significantly affecting *C. l. baileyi* due to their low occurrence and minimal impact on the population or lack of information. However, we recognize that multiple sources of mortality or risk acting in combination have greater potential to affect *C. l. baileyi* than each factor alone. Thus, we consider how factors that by themselves may not have a significant effect on *C. l. baileyi,* may affect the subspecies when considered in combination.

The small population size of the BRWRA population exacerbates the potential for all other factors to disproportionately affect *C. l. baileyi.* The combined effects of demographic, genetic, environmental, and catastrophic events to a small population can create an extinction vortex—an unrecoverable population decline—that results in extinction. Small population size directly and significantly increases the likelihood of inbreeding depression, which has been documented to decrease individual fitness, hinder population growth, and decrease the population's probability of persistence. Small population size also increases the likelihood that concurrent mortalities from multiple causes that individually may not be resulting in a population decline (*e.g.,* vehicular collisions, natural sources of mortality) could collectively do so, depending on the population's productivity, especially when additive to an already significant source of mortality such as illegal shooting. Effects from disease, catastrophe, environmental conditions, or loss of heterozygosity that normally could be sustained by a larger, more resilient population have the potential to rapidly affect the size, growth rate, and genetic integrity of the small BRWRA population when they act in combination. Therefore we consider the combination of factors B, C, and E to be significantly affecting *C. l. baileyi.*

Summary of Five-Factor Analysis

We do not find habitat destruction, curtailment, or modification to be significantly affecting *C. l. baileyi* now, nor do we find that these factors are likely to do so in the future regardless of whether the subspecies is protected by the Act. The size and federally protected status of the Gila and Apache National Forests are adequate and appropriate for the reintroduction project. These National Forests provide secure habitat with an adequate prey base and habitat characteristics to support the current wolf population. The Wallow Fire and the Whitewater-Baldy Complex Fire, while catastrophic, were not sources of habitat modification, destruction, or curtailment that affected *C. l. baileyi* because there were no documented wolf mortalities during the fires, and prey populations are expected to increase in response to postfire positive effects on vegetation.

We do not find overutilization for commercial, recreational, scientific, or educational purposes to be significantly affecting *C. l. baileyi* because we have no evidence to indicate that legal killing or removal of wolves from the wild for commercial, recreational (*i.e.,* hunting), scientific, or educational purposes is occurring. The killing of wolves for their pelts is not known to occur, and *C. l. baileyi* research-related mortalities are minimal or nonexistent. Incidence of injuries and mortalities from trapping (for other animals) has been low. In absence of Federal protection, state regulations in Arizona and New Mexico, and Federal regulations in Mexico, could provide regulations to protect *C. l. baileyi* from overutilization. Overutilization of *C. l. baileyi* would not likely increase if they were not listed under the Act due to the protected status they would be afforded by the states and Mexico.

Based on known disease occurrences in the current population and the active vaccination program, we do not consider disease to be a threat to *C. l. baileyi.* Absent the protection of the Act, a similar vaccination program would need to be implemented by the states or other parties, or the potential for disease to significantly affect *C. l. baileyi* could increase.

Predation (by nonhuman predators) is not significantly affecting *C. l. baileyi.* No wild predator regularly preys on wolves, and only a small number of predator-related wolf mortalities have been documented in the current *C. l. baileyi* population. We do not consider predation likely to significantly affect *C. l. baileyi* in the future or if the subspecies was not protected by the Act.

Illegal shooting is identified as a current threat. Adequate regulatory protections are not available to protect *C. l. baileyi* from illegal shooting without the protection of the Act. We would expect shooting of *C. l. baileyi* to increase if they were not federally protected, as state penalties (assuming *C. l. baileyi* was maintained as a state-protected species) are less than Federal penalties.

Inbreeding, loss of heterozygosity, loss of adaptive potential, and small population size are significantly affecting *C. l. baileyi.* We recognize the importance of the captive management program and the active reintroduction project and recovery program in addressing these issues. Absent the protection of the Act, their effects on *C. l. baileyi* would continue, or possibly increase depending on the degree of active management provided by the states or other parties.

Vehicular collisions, human intolerance, land-use conflicts, hybridization, and climate change are not significantly affecting *C. l. baileyi,* nor are they expected to do so in the near future or if *C. l. baileyi* was not protected by the Act.

Climate change is not significantly affecting the Mexican wolf nor would it do so in the absence of the Act's protections. The effects of climate change may become more pronounced in the future, but as is the case with all stressors that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that these effects are significant to the species. The generalist characteristics of the wolf and their primary prey, elk, lead us to conclude that climate change will not significantly affect *C. l. baileyi* in the future.

The cumulative effects of factors that increase mortality and decrease the genetic diversity health of *C. l. baileyi* are significantly affecting *C. l. baileyi,* particularly within the context of its small population size (a characteristic that significantly decreases the probability of a population's persistence). Cumulative effects are significantly affecting *C. l. baileyi* at the current time and likely will continue to do so in the future. Absent the protection of the Act, negative cumulative effects may increase due to the potential for more killing of wolves, increased risk of inbreeding, disease epidemics, and other sources of mortality, all exacerbated by *C. l. bailey's* small population size.

Conclusion

We recently published a not-warranted 12-month finding on petitions to list the Mexican wolf as a subspecies or DPS (77 FR 61375, October 9, 2012). Our finding was based on the fact that the population in question was already fully protected as endangered under the Act (77 FR 61375, October 9, 2012). However, our finding further stated that we could not, consistent with the requirements of the Act, take any action that would remove the protections accruing to the southwestern population under the existing *C. lupus* listing without first determining whether the Mexican wolf warranted listing separately as a subspecies or a DPS, and, if so, putting a separate listing in place (77 FR 61377, October 9, 2012). Therefore, because we are now proposing to remove protections for the current *C. lupus* listed entity, we must reconsider listing the Mexican wolf as a subspecies or DPS.

We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to *C. l. baileyi* and have determined that the subspecies warrants listing as endangered throughout its range. As required by the Act, we considered the five potential threat factors to assess whether *C. l. baileyi* is endangered or threatened throughout its range. Based on our analysis, we find that *C. l. baileyi* is in danger of extinction throughout all of its range due to small population size, illegal killing, inbreeding, loss of heterozygosity and adaptive potential, and the cumulative effect of all threats. Absent protection by the Act, regulatory protection, especially against shooting, poisoning, or other forms of killing, would not be adequate to ensure the survival of *C. l. baileyi.*

Our finding that *C. l. baileyi* is in danger of extinction throughout all of its range is consistent with our administrative approach to determining which species are on the brink of extinction and, therefore, warrant listing as endangered. Prior to the early 1900s, *C. l. baileyi* was distributed over a large geographic area that included portions of the Southwest and much of Mexico. *C. l. baileyi* was nearly eliminated in the wild by the mid-1900's due to predator eradication efforts, which led to its listing as an endangered subspecies in 1976 and again as part of the species-level gray wolf listing in 1978. Therefore, *C. l. baileyi* is a subspecies that was formerly widespread but was

reduced to such critically low numbers and restricted range (*i.e.,* eliminated in the wild) that it is at high risk of extinction due to threats that would not otherwise imperil it.

At the time of its initial listing, no robust populations of *C. l. baileyi* remained in the wild. The establishment and success of the captive-breeding program temporarily prevented immediate absolute extinction of *C. l. baileyi* and, by producing surplus animals, has enabled us to undertake the reestablishment of *C. l. baileyi* in the BRWRA by releasing captive animals to the wild. In the context of our current proposal to list *C. l. baileyi* as an endangered subspecies, we recognize that, even with these significant improvements in *C. l. baileyi's* status, its current geographic distribution in the BRWRA is a very small portion of its former range. Moreover, within this reduced and restricted range, *C. l. baileyi* faces significant threats that are intensified by its small population size. *Canis lupus baileyi* is highly susceptible to inbreeding, loss of heterozygosity, and loss of adaptive potential due to the bottleneck created during its extreme population decline prior to protection by the Act, the limited number of and relatedness of the founders of the captive population, and the loss of some genetic material from the founders. The effects of inbreeding have been documented in *C. l. baileyi* and require active, ongoing management to minimize.

Mortality of *C. l. baileyi* from illegal killing, as well as all other sources of mortality or removal from the wild population, is occurring within the context of a small population. While all populations sustain some amount of mortality, including that caused by humans, the current small population has a low probability of persistence compared to a larger, more geographically widespread population. Absent the protection of the Act, illegal killing would likely increase dramatically, further reducing the population's size and increasing its vulnerability to genetic and demographic factors, putting *C. l. baileyi* at imminent risk of extinction. These factors are occurring throughout *C. l. baileyi's* range in the wild, resulting in our determination that the subspecies warrants listing as endangered throughout its range.

Is there a DPS of C. lupus *in the contiguous United States or Mexico that warrants the protections of the Act?*

We now consider whether there are any DPSs of *C. lupus* that occur within the bounds of the current *C. lupus* listed entity (Figure 1) and warrant the protections of the Act. The gray wolf populations in the northern Rocky Mountains and the western Great Lakes are successfully recovered and delisted (76 FR 25590, 77 FR 55530, 76 FR 81666). These populations are not part of the current *C. lupus* listed entity and thus are not considered in this analysis. Further, because we have already determined that *C. l. baileyi* is an endangered subspecies, we do not need to consider any gray wolves representative of that population in this analysis. Given these facts, only the gray wolves currently occupying the Pacific Northwest need be considered; we begin our evaluation with a description of the historical and current distribution of gray wolves in that region followed by a DPS analysis.

Pacific Northwest—Historical Distribution

Wolves were historically distributed across most of the Pacific Northwest, except in arid deserts and on mountaintops (Young and Goldman 1944, pp. 10, 18, 30, 44–45; Mech 1970, p. 31; Nowak 2003, p. 243). In western Oregon and Washington, wolves were historically common and widely distributed in the Coast Range, Cascade Mountains, Olympic Peninsula, and, prior to major settlement of the American west, were also regularly reported from the Willamette Valley and Puget Trough (Suckley 1859, pp. 75, 90; Suckley and Gibbs 1859, pp. 110–111; Conard 1905, p. 393; Bailey 1936, pp. 272–275; Dalquest 1948, pp. 232–233). By the 1940s, wolves in Washington and Oregon were primarily confined to remote mountainous areas, mostly in the National Forests of the Cascade Mountains, although there were a couple of wolf records in eastern Oregon in the 1930s (1 in Grant County and 1 in Lake County) (Young and Goldman 1944, pp. 53–55). In Oregon, Service records indicate that, by 1941, the only area west of the Cascades known to contain wolves was primarily in eastern Douglas County (Rowe 1941, entire).

Historical range maps show considerable variation in the gray wolf's former range in California (Shelton and Weckerly 2007, pp. 224–227). There are only two known recent museum records of gray wolves from California, both in the possession of the Museum of Vertebrate Zoology in Berkeley, California (Schmidt 1991, p. 82; Jurek 1994, p. 2): in 1922, an adult male gray wolf was trapped in the Providence Mountains, in eastern San Bernardino County (Jurek 1994, p. 2); and, in 1924, a gray wolf was trapped in the Cascade Mountains of Lassen County, 1 mile east of Litchfield, California (Jurek 1994, p. 2). In addition to these two records, in 1962, a gray wolf was shot in the southern Sierra Nevada Mountains at Woodlake, near Sequoia National Park (Ingles 1963, pp. 109–110); however, subsequent skull measurements indicate that this individual may have been an introduced Asiatic wolf (McCullough 1967, pp. 146–153)]. Despite limited preserved physical evidence for wolves in California, there were many reports of wolves from around the state in the 1800s and early 1900s (*e.g.,* Sage 1846, entire, Price 1894, p. 331; Dunn 1904, pp. 48–50; Dixon 1916, pp. 125; Young and Goldman 1944, pp. 18–19, 56–57; Sumner and Dixon 1953, pp. 464–465; Schmidt 1991, pp. 79–85), with the earliest reports noting that they were ''numerous and troublesome'' and ''a source of great annoyance to the inhabitants by destroying their sheep, calves, colts, and even full-grown cattle and horses'' (Sage 1846, p. 196). Cronise (1868, p. 439) described gray wolves in the mid-1800s as ''common in the northern and higher districts of the state [of California],'' with the skin being worth ''one to two dollars.'' In 1904, Stephens (1906, p. 217) stated, ''A very few Gray Wolves live in the high Sierras and in the mountains of northeastern California.'' Descriptions of early explorers were sometimes accompanied by little detail, and coyotes were sometimes called wolves (California Department of Fish and Wildlife 2011, pp. 1–2); however, Schmidt (1991, entire) accounted for this situation in his analysis of anecdotal wolf records in California by only accepting records that differentiated between coyotes, foxes, and wolves.

In 1939, the U.S. Forest Service estimated that wolves were present in small numbers on the Lassen (16 wolves), Tahoe (4), Eldorado (12), Stanislaus (6), Angeles (5) in California, although the basis for these estimates is not given (Young and Goldman 1944, p. 55). Charles Poole of the Forest Service confirmed five wolves from northern Modoc County on the Oregon-California border in the vicinity of Cow Head Lake in the 1920s, and one was shot in July 1922 in Modoc County (Young and Goldman 1944, p. 57). The paucity of physical evidence of wolves occupying California is likely an artifact of targeted elimination associated with the Spanish missions and their extensive livestock interests (Schmidt 1991, p. 83) prior to the era of collecting specimens for natural-history museums. Late Pleistocene remains of gray wolves have been uncovered in several regions of

California (including at La Brea tarpits (Los Angeles County), Maricopa Brea (Kern County), McKittrick Tar Seeps (Kern County), Potter Creek Cave (Shasta County), Samwel Cave (Shasta County), and Shuiling Cave (San Bernardino County) (Nowak 1979, pp. 99–100). Moreover, wolves were historically known to occupy every habitat containing large ungulates in the Northern Hemisphere from about 20 degrees latitude to the polar ice pack (Fuller *et al.* 2003, p. 163). The adaptability of wolves and the early firsthand accounts of wolves in California suggest that wolves likely occurred in northern California, the Sierra Nevada, and southern California mountains.

In Nevada, wolves may have always been scarce (Young and Goldman 1944, p. 30), but probably occurred in the forested regions of the state (Young and Goldman 1944, pp. 10, 455). During 20 years of predator control campaigns of the early 1900s, six wolves were taken, only one of which was from the western half of the state, near the ghost town of Leadville, NV (Young and Goldman 1944, p. 30; Hall 1946, pp. 266–269). In addition to this record, there is one record of early-recent gray wolf bone remains, near Fallon, Nevada (Churchill County) (Morrison 1964, p. 73; Nowak 1979, p. 101). Several wolf observations from western Nevada were also reported in 1852 from around the Humboldt River, Humboldt Sink, and Carson Valley (Turnbull 1913, pp. 164, 195, 200, 208; Young and Goldman 1944, p. 30).

Pacific Northwest—Causes of Decline

Extensive unregulated trapping of wolves for their pelts began with the arrival of the Hudson's Bay Company in the Pacific Northwest and the establishment of a system of trade for wolf pelts in 1820s (Laufer and Jenkins 1989, p. 323). From 1827 to 1859, more than 7,700 wolf pelts were traded from in or near the Cascade Mountains area in Washington and British Columbia alone (Laufer and Jenkins 1989, p. 323). This trade was followed by an influx of settlers to the region in the mid-1800s who used strychnine to poison wolves in an effort to protect livestock (*e.g.,* Putnam 1928, p. 256). As the first provisional governments in the region were formed, they enacted wolf bounties, which spawned an industry of bounty hunters, or ''wolfers,'' who used strychnine to kill large numbers of wolves to collect bounties and to sell wolf pelts (Hampton 1997, pp. 107–108). Eradication of wolves continued into the twentieth century, when government forest rangers were encouraged to kill wolves on public lands to destroy the remaining ''breeding grounds'' of wolves (Hampton 1997, pp. 131–132). In 1915, Congress appropriated money to the federal Bureau of Biological Survey and its Division of Predator and Rodent Control (PARC) to fund the extirpation of wolves and other animals injurious to agriculture and animal husbandry (Hampton 1997, p. 134). Spurred by Federal, state, and local government bounties, the combination of poisoning, unregulated trapping and shooting, and the public funding of wolf extermination efforts ultimately resulted in the elimination of the gray wolf from the Pacific Northwest and many other areas.

Pacific Northwest—Current Distribution

At the time of the passage of the Federal Endangered Species Act of 1973, wolves were presumed to be extirpated from the Pacific Northwest; however, a wolf (OSUFW 8727) was killed in eastern Douglas County, Oregon in 1978 (Verts and Carraway 1998, p. 363). As a result of colonization from core wolf habitats in Yellowstone and central Idaho where wolves were reintroduced in the mid-1990s, breeding wolf packs became reestablished in northeastern Oregon and eastern Washington (Service *et al.* 2011, p. 5). Because of their connectivity to core habitats in central Idaho, wolves in the eastern third of Oregon and Washington are now considered part of the NRM DPS (76 FR 25590).

In Oregon, there have been several recent credible reports of wolves west of the NRM DPS, in the western Blue Mountains, central Cascades, and Klamath Basin, including a lone wolf that was photographed along Highway 20 near the Three Sisters Wilderness in 2009, and a radio-collared wolf (OR–3) from the Imnaha Pack (one of four known packs located within the NRM DPS) that was photographed by a trail camera on July 5, 2011, on the western edge of the Umatilla National Forest in Wheeler County. The last telemetry location for this dispersing wolf was recorded on September 30, 2011, in Crook County, Oregon, more than 250 km (156 mi) from its natal area (ODFW 2011). In addition, another dispersing wolf (OR–7), also from the Imnaha pack, has travelled more than 600 km (373 mi) straight-line distance from its natal area and ventured as far as northern California. Evidence of wolves breeding west of the NRM DPS in Oregon has not been documented in recent times (personal communication T. Hiller, ODFW, 2011).

In the North Cascades of Washington, near the Canadian Border, numerous wolf sightings were reported in the 1980s and 1990s, including at least three separate groups of adult wolves with pups (Laufer and Jenkins 1989, p. 323; North Cascades National Park 2004, pp. 2–3). Multiple wolf reports from Okanogan County in 2008 led to confirmation of the first fully documented (through photographs, howling responses, and genetic testing) breeding by a wolf pack in Washington since the 1930s. A pack (named the Lookout Pack) with at least four adults/yearlings and six pups was confirmed in the western part of the county and adjacent northern Chelan County (west of the NRM DPS) in the summer of 2008, when the breeding male and female were captured and radio-collared, and other pack members were photographed. Preliminary genetic testing of the breeding male and female suggested they were descended from wolves occurring in (1) coastal British Columbia and (2) northeastern British Columbia, northwestern Alberta, or the reintroduced populations in central Idaho and the greater Yellowstone area (J. Pollinger 2008, *in litt.*).

The pack produced another litter of at least four pups in 2009, as well as a probable litter in 2007 based on a sighting report of six to eight animals in nearby northern Chelan County in September 2007 (R. Kuntz, National Park Service, pers. comm.) and a report of seven to nine animals in Okanogan County in the winter of 2007–2008. The pack appears to have suffered significant human-caused mortality from illegal killing. In June, 2011, a Federal grand jury indictment included the alleged killing of up to five wolves in 2008 and 2009, believed to be members of the Lookout pack. In May 2010, the Lookout breeding female disappeared several weeks after the suspected birth of a litter. This appeared to cause a breakdown in pack structure, with the breeding male ranging more widely and spending most of the summer alone. The status of this pack was unknown at the end of 2011. However, sightings of multiple wolves (including the breeding male) traveling together in the winter of 2011–2012 indicate two wolves still inhabit the Lookout pack's territory. The pack occupied an area totaling about 350 square miles from 2008 to 2010 (Wiles *et al.* 2011, p. 23).

In the spring of 2011, numerous sightings of wolves were reported from the Cle Elum Ranger District in central Washington and the subsequent deployment of remotely activated field cameras documented four different

wolflike canids in the area, with one photo showing an adult and a subadult. A lactating female from this group of canids (named the Teanaway pack) was subsequently captured, and genetic testing confirmed that this individual was a gray wolf that was closely related to (consistent with being an offspring of) the Lookout pack breeding pair (Robinson *et al.* 2011, *in litt.,* pp. 1–2). In December 2011, researchers determined that this pack consisted of three adults and four pups occupying an area of approximately 300 square miles (Frame and Allen, 2012, p. 8).

During the winter of 2010–2011, remote cameras recorded images of what appeared to be wolves near Hozemeen, Washington in the Ross Lake National Recreation Area, near the Canadian border. In May 2011, biologists from the Washington Department of Fish and Wildlife (WDFW) conducted an effort to trap and radio-collar potential wolves at this location. Abundant canine scat and several sets of canine tracks were observed during the 3-week effort, but no animals were captured. At this time the genetic status (wolf, dog, or wolf–dog hybrid) and denning location of these animals has not been determined.

In March 2013, WDFW remote cameras documented two wolves feeding on an elk carcass together southwest of Wenatchee, WA. The wolves were spotted in the area several days later, and were confirmed as the Wenatchee pack. One of the wolves is thought to be a dispersing animal from the Teanaway pack, and the other is unknown. It is unclear at this time whether these wolves will remain resident in the area.

In California, the only wolf confirmed since their extirpation has been the dispersing wolf (OR–7) from northeastern Oregon. In Nevada, there have been no confirmed reports of wolves since their extirpation, which likely occurred in the 1940s (Young and Goldman 1944, p. 56).

Pacific Northwest—Do wolves in this area constitute a population?

Fundamental to identification of a possible DPS is the existence of a population. As stated previously, our regulations define a ''population'' as a ''group of fish or wildlife in the same taxon below the subspecific level, in common spatial arrangement that interbreed when mature'' (50 CFR 17.3). We have refined that definition in other wolf rulemakings to mean ''at least 2 breeding pairs of wild wolves successfully raising at least 2 young each year (until December 31 of the year of their birth), for 2 consecutive years'' (Service 1994, Appendix 8; 59 FR 60252, 60266; November 22, 1994). The determination justifying this definition found that these standards were ''the minimum standards for a wolf population'' and that a ''group of wolves [meeting this standard] would cease to be a population if one or both pairs do not survive, do not maintain their pair–bond, do not breed, or do not produce offspring, or if both pups do not survive for the specified period'' (Service 1994, Appendix 8).

To date, this standard has not been documented in the Pacific Northwest (specifically, for those wolves outside of the NRM DPS's western boundary and south of the Canadian border). While two breeding pairs have been documented in listed portions of the Pacific Northwest (both in Washington), 2 consecutive years of raising two young has been documented only for one breeding pair. The Teanaway pack was documented successfully raising at least two young until December 31 in 2011 and 2012 (Frame and Allen 2012, p. 8; Becker *et al.* 2013). Breeding-pair status in the Lookout pack has not been confirmed since 2009. Otherwise, only lone dispersing animals have been documented in this area.

Even though wolves in the Pacific Northwest, when viewed in isolation, do not yet constitute a population according to our 1994 definition, we decided to undertake a DPS analysis for two reasons. First, given the rugged terrain in the North Cascades and the limited search effort, and the fact that the Lookout pack has not had any radio-collared individuals since 2010, it is possible that additional breeding pairs have gone undetected or that the documented breeding pairs have successfully bred in consecutive years without detection. Over the last 2 years, WDFW has collected evidence suggesting that a pack may be located on the Canadian border, but radio collaring efforts have not yet been successful. Public observations also support the possibility of other wolves in the area, but as of the date of this publication, only two breeding pairs have been confirmed in Washington's North Cascades in recent times.

Second, wolf recolonization patterns (Frame and Allen 2012, p. 6; Morgan 2011, pp. 2–6) indicate that, even if wolves do not currently meet our technical definition of a population in the Pacific Northwest, we expect more dispersing wolves from the Northern Rocky Mountains and British Columbia to occupy the area in the near future. Three new packs were documented in eastern Washington (four additional packs are suspected; three in eastern Washington and one in northwestern Washington) in 2012. Wolves in the NRM DPS and in British Columbia are expanding in number and distribution. (Service 2012, pp. 1, 2; British Columbia Ministry of Forests, Lands, and Natural Resource Operations 2012, p. 4). Expansion of wolves into these surrounding areas increases the chance that dispersing wolves will move into unoccupied areas or areas with low wolf densities (Fuller *et al.* 2003, p. 181, Jimenez *et al.* In review, entire), such as the Pacific Northwest. Therefore, while the best available information indicates our standard for a population has not yet been satisfied, this standard will likely be met in the next few years.

It is worth noting that this situation is fundamentally different than past situations where wolves were evaluated against our ''wolf population standard.'' In 1994, we determined that neither the Greater Yellowstone Area nor the central Idaho region were ''even close to having a separate population'' (Service 1994, Appendix 8). In this evaluation, Idaho was noted as having the most wolf activity, but even this situation was described as only ''occasional immigration of single wolves from a breeding population(s) elsewhere, possible with intermittent reproduction in some years'' (Service 1994, Appendix 8). Similarly, in 2010, we concluded that a petition to list a northeastern U.S. wolf DPS ''did not present substantial scientific or commercial information indicating that the petitioned action may be warranted'' primarily because the petition and other readily available information failed to show anything more than occasional dispersers and no reproduction (75 FR 32869, June 10, 2010). These situations contrast with the Pacific Northwest where the region appears to be approaching our standards for a population. Given the above, we evaluate the discreteness of wolves in this area relative to other wolf populations.

Pacific Northwest—Distinct Vertebrate Population Segment Analysis

Introduction

In accordance with the 1996 DPS policy, to be recognized as a DPS, a population of vertebrate animals must be both discrete and significant (61 FR 4722, February 7, 1996). A population 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 or habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. If we determine that a population segment is discrete, we next consider its biological and ecological significance in light of Congressional guidance (see Senate Report 151, 96th Congress, 1st Session) that the authority to list DPS's be used ''. . . sparingly'' while encouraging the conservation of genetic diversity. In carrying out this examination, the Service considers available scientific evidence of its significance to the taxon to which it belongs. This 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 of its historic range, and/or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. If a vertebrate population is determined to be discrete and significant, we then evaluate the conservation status of the population to determine if it is threatened or endangered.

The DPS evaluation that follows concerns gray wolves occurring in the Pacific Northwest (*i.e.,* wolves to the west of the Northern Rocky Mountain DPS within the contiguous United States).

Pacific Northwest—Discreteness Analysis

Adjacent to our analysis area are two wolf population sources, including wolves to the east in the NRM DPS and wolves to the north, in British Columbia. We will analyze discreteness in relation to the NRM DPS first. If we determine that wolves in the Pacific Northwest are not discrete from NRM wolves, an evaluation with respect to British Columbia is not needed. If, however, Pacific NW wolves are discrete from NRM wolves, we will then analyze discreteness from the wolves in British Columbia.

Marked Separation—Physical Factors—In our 2009 rule designating and delisting the NRM DPS (vacated *(Defenders of Wildlife et al.* v. *Salazar et al.,* (729 F. Supp. 2d 1207 (D. Mont.), but later reinstated by act of Congress (§ 1713 of Pub. L. 112–10)) we found that wolves in the NRM were physically discrete from any wolves that might eventually occupy the area to the west of the NRM boundary (74 FR 15123). At that time, only one wolf pack existed west of the NRM boundary, and genetic evidence suggested that at least one member of that pack came from British Columbia. The boundary for the NRM DPS, finalized in 2008 (73 FR 10518, February 27, 2008), was determined largely by identifying a breakpoint (three times the average dispersal distance) for unusually long-distance dispersal out from existing pack territories in 2004.

Since that time, wolves have expanded in number and distribution (Service 2012), and the outer edge of the NRM wolf population is now very close to the western boundary of the NRM DPS in northeast Washington and Oregon. Wolves, which likely originated from the NRM DPS, currently occupy territories within 40 km (25 mi) of the DPS boundary in Oregon and within 80 km (50 mi) of the DPS boundary in Washington (suspected packs in Washington; confirmed packs are 135 km (85 mi)). Furthermore, the Lookout Pack (which is outside the NRM DPS boundary in listed portions of Washington) are within approximately 89 km (55 mi) from the nearest pack in the NRM DPS (Strawberry pack, on the Colville Indian Reservation in north central Washington). Similarly, the Teanaway pack (also outside the NRM DPS boundary in listed portions of Washington, in the Cascade Mountains) is approximately 177 km (110 mi) from the Strawberry pack. In our rule delisting the NRM DPS of gray wolf we defined likely dispersal distances of from 97 to 300 km (60 to 190 mi) from a core wolf population. Distances between wolves currently occupying territories on either side of the NRM DPS boundary fall well within our defined range of likely dispersal distances, suggesting that physical distance will not separate these wolves in the long term.

To further understand physical separation in the Pacific Northwest, we reviewed several wolf-habitat models (Houts 2003, p. 7; Ratti *et al.* 2004, p. 30, Larsen and Ripple 2006, pp. 48, 52, 56; Carroll *et al.* 2001, p. 36; Carroll *et al.* 2006, p. 27, Carroll, *in litt.* 2008, p. 2) and an analysis of wolf–movement habitat linkages and fracture zones in Washington (Singleton *et al.* 2002, Fig. 12). We also reviewed a modeling effort by Washington Department of Fish and Wildlife that combined habitat models with movement data (Wiles *et al.* 2011, p. 55). Because none of these models covered the entire area of interest, we also projected Oakleaf *et al.*'s (2006) wolf-habitat model across Washington, Oregon, and northern California using local data (Service, unpublished data). Based on this new review of wolf-habitat models, there is little separation of occupied wolf habitat in the NRM DPS and suitable habitat in the analysis area. Furthermore, because most wolf-habitat models are developed based on the location of wolf territories (rather than dispersing wolves), geographic gaps in suitable habitat may not be reflective of long-term barriers to population interchange (Mladenoff *et al.* 1999), as we previously implied (74 FR 15123), especially as wolf occupancy continues to increase on both sides of the NRM DPS' western boundary.

Data from habitat mapping efforts suggests that any gaps in suitable (breeding) habitat are not so wide as to preclude dispersing individuals. Wolves are well known to move long distances across a variety of habitat types including open grasslands and agricultural areas (Mech 1995, p. 272), and rivers are not effective barriers to movement (Young and Goldman 1944, pp. 79–80).

In Washington, the NRM DPS boundary runs along the Okanogan River, which occupies a narrow (15- to 25-km (10- to 15-mi) strip of unsuitable habitat (open sagebrush, agriculture) between the Okanogan Highlands and the Cascade Mountains. Further south, the DPS boundary transects the Columbia Basin, an unforested agricultural region that likely limits wolf dispersal to a certain extent. Wolf-habitat models by Larsen and Ripple (2006, entire) and Carroll (*in litt.* 2008, p. 2) showed suitable habitat along the Oregon coast and the Cascade Range, with limited separation of suitable habitat across the NRM DPS boundary in northeast Oregon. The Blue Mountain range stretches from the extreme northeast corner of Oregon southwest to the NRM DPS boundary, where the Blue Mountains transition into the smaller Aldrich and Ochoco ranges. These public lands link together smaller tracts of suitable habitat, and arrive at the Middle Deschutes-Crooked River basin about 175 km (108 mi) west of the NRM DPS, and 65 km (40 mi) east of the Cascade Mountains (a large tract of high-quality wolf habitat). Although somewhat patchy, several juvenile wolves have successfully traveled through this habitat while dispersing from the NRM DPS (ODFW 2011, pp. 5–6).

Based on our analysis above, we find no significant physical separation

delimiting wolves in the analysis area from the NRM wolf population.

Marked Separation—Physiological, Behavioral, or Ecological Factors—Information on the current physiological, behavioral, or ecological separation of wolves in the analysis area and wolves in the NRM DPS is equivocal. Genetic analysis of a male and female wolf from the Lookout pack found that the male possessed a mitochondrial haplotype unique to coastal/southern British Columbia region and markedly different than haplotypes present in the NRM DPS (Pollinger *et al., in litt.* 2008, p. 2). However, the female possessed a mitochondrial haplotype that was broadly distributed throughout North America (Pollinger *et al., in litt.* 2008, p. 2). The fact that the female had a more broadly distributed mitochondrial haplotype means that she could have originated from coastal British Columbia, but the data cannot rule out the possibility that she may have originated elsewhere (*i.e.,* NRM DPS). Analysis of microsatellites ruled out the possibility that the two wolves originated from the southern Alberta/northwest Montana population, but could not clearly determine whether they were more related to coastal/southern British Columbia wolves or wolves from the reintroduced population in Idaho and Yellowstone (Pollinger *et al., in litt.* 2008, p. 3). Genetic testing of a female wolf from the Teanaway pack in the southern Cascades of Washington State indicated that she was closely related to the male and female of the Lookout pack (*i.e.,* probably a descendent of the Lookout pack's male and female) (Robinson *et al., in litt.* 2011, pp. 1–2). While we expect individuals of markedly different haplotypes to continue to recolonize the area from coastal British Columbia and from the NRM DPS, we also expect interbreeding to occur, as genetic evidence of the Lookout pack suggests. Therefore, contemporary genetic information does not lead us to conclude that wolves on either side of the NRM DPS line have marked genetic differences.

Historical subspecies delineations based on morphology suggest that a biological boundary limiting dispersal or reproductive intermixing likely existed between eastern and western Oregon and Washington prior to the extirpation of wolves from the region (Bailey 1936, pp. 272–275; Young and Goldman 1944, p. 414; Hall and Kelson 1959, p. 849, Figure 6). Moreover, recent genetic, behavioral, and morphological data in British Columbia and Alaska show marked separation of coastal and inland wolves (Geffen *et al.* 2004, pp. 2488–2489; Muñoz-Fuentes *et al.* 2009, pp. 10–12; Weckworth *et al.* 2010, pp. 371–372, vonHoldt *et al.* 2011, pp. 2–8), which is indicative of ecological processes that may extend into the Pacific Northwest of the United States where climatic and physiographic factors of coastal and inland ecosystems parallel those to the north (Commission for Environmental Cooperation 1997, pp. 9, 21–22).

If dispersing gray wolves select habitats similar to the one in which they were reared (as hypothesized by Muñoz-Fuentes *et al.* (2009, pp. 10–11)), we would expect limited movement and interbreeding of wolves in coastal and inland areas, similar to the historical pattern of differentiation. However, the mechanisms for a subspecific divide in British Columbia is unknown and the ultimate recolonization pattern of wolves in the Pacific Northwest region of the United States and the extent of any future separation from the NRM DPS is unpredictable. Wolves can disperse long distances across a variety of habitats, as evidenced by OR–3 and OR–7, dispersing wolves from Oregon (Mech 1995, p. 272). Thus, wolves may recolonize western Oregon and Washington and the rest of the region from coastal British Columbia, from eastern Oregon and eastern Washington, or from both areas. Whether wolves from one area will possess traits that allow them to outcompete or exclude wolves from the other area or whether they will regularly intermix is unknown. However, given their long-range dispersal capabilities, known long-distance dispersal events across the NRM boundary, and lack of major habitat barriers, it is more likely that wolves on either side of the NRM boundary will not form discrete populations as defined in our DPS policy.

Summary for DPS Analysis

Recovery of wolf populations in the NRM DPS and southern British Columbia (British Columbia Ministry of Forests, Lands and Natural Resource Operations (2012, p. 4) has contributed to recolonization of new areas in eastern Washington and Oregon. While we know of resident wolves occupying territories in the western two thirds of Washington (outside the NRM DPS), they do not currently constitute a ''population'' and, therefore, the area cannot be defined as a DPS. Nevertheless, given ongoing recolonization and the lack of substantial dispersal barriers into the Pacific Northwest from populations to the north and east, wolves in the area are likely to meet our standard for a population in the near future. Therefore, we moved forward with a DPS analysis to see if such a likely future population would be discrete from the existing population in the Northern Rocky Mountains and British Columbia.

In the absence of identified barriers to intermixing, dispersal of wolves across the NRM DPS boundary is likely to continue such that a future wolf population in the Pacific Northwest is not likely to be discrete from wolves in the NRM DPS. Habitat linkages also connect occupied wolf habitat in British Columbia to available habitat in the Pacific Northwest (Carroll *in litt.* 2008, p. 8, Appendix A). It is reasonable to expect that the future population of wolves in the Pacific Northwest will be an extension, or part of, populations to the north and east, rather than a discrete population. Furthermore, the best available information does not indicate that wolves in the Pacific Northwest are likely to possess physiological, behavioral, or ecological traits that separate them from wolves in the Northern Rocky Mountains. Therefore, we find that wolves in the Pacific Northwest are not discrete from wolves in the Northern Rocky Mountains—rather they constitute the expanding front of large, robust, and recovered wolf populations to the north and east. Even if we considered a larger DPS, with a northern boundary extending into British Columbia, we would still find a lack of discreteness from the NRM DPS. Due to this lack of discreteness, wolves in the Pacific Northwest, whether considered in combination with wolves in British Columbia or alone, would not qualify as a distinct population segment under our 1996 DPS policy and are, therefore, not eligible for protection under the Act.

We are confident that wolves will continue to recolonize the Pacific Northwest regardless of Federal protection. Wolves are classified as endangered under both the Oregon and Washington Endangered Species Acts (WAC 232–12–014 and 232–12–011; ORS 496.171 to 496.192 and 498.026), and both states have conservation strategies for recovering wolves (ODFW 2010, entire; Wiles *et al.* 2011, entire). In addition, California recently declared wolves as a candidate for listing under the California Endangered Species Act. While it reviews whether to add wolves to its list of threatened or endangered species, California will treat wolves as a state-listed species.

Significant Portion of Its Range Analysis

The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines the term ''species'' as follows: ''The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), *vacated on other grounds* (9th Cir. 2012), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, Apr. 12, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, Feb. 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (*i.e.,* species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that, once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

On December 9, 2011, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service published a notice (76 FR 76987) of draft policy to establish a joint interpretation and application of SPR that reflects a permissible reading of the law and its legislative history, and minimizes undesirable policy outcomes, while fulfilling the conservation purposes of the Act. To date, the draft SPR policy has not been finalized. Although the following analyses does not implement the draft policy as a binding rule, and instead independently lay out the rational for the SPR analyses, if an SPR policy is finalized prior to the Service making a final determination on this proposed action we will ensure that our final determination is consistent with the final SPR policy.

Consistent with the district court decisions discussed above, and for the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an ''endangered species.'' The same analysis applies to ''threatened species.'' Therefore, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species shall be listed as endangered or threatened, respectively, and the Act's protections shall be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice, as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitats is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one of these concepts.

For the purposes of this finding, we determine whether a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether, *without that portion,* the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''endangered''). Conversely, we would not consider the portion of the range at

issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.,* if that portion were completely extirpated. In other words, the portion of the range need not be so important that even being in danger of extinction in that portion would be sufficient to cause the remainder of the range to be endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant *and* threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the portion status analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' those portions will not warrant further consideration.

C. lupus, C. l. nubilus, and C. l. occidentalis

Having determined that *C. lupus, C. l. nubilus,* and *C. l. occidentalis* are not endangered or threatened throughout their ranges, we next consider whether there are any significant portions of the range where *C. lupus, C. l. nubilus,* or *C. l. occidentalis* is in danger of extinction or is likely to become endangered in the foreseeable future.

We consider the range of *C. lupus* to include portions of North America, Europe, North, Central and South Asia, the Middle East, and North Africa (Mech and Boitani 2004, pp. 125–128; Linnell *et al.* 2008, p. 48; 77 FR 55539; 76 FR 81676; Rueness *et al.* 2011, pp. 1–5; Gaubert *et al.* 2012, pp. 3–7).

We consider the range of *C. l. nubilus* to include the western Great Lakes region, and portions of western Washington and western Oregon, and southeastern Alaska in the United States, the western and coastal regions of British Columbia, most of mainland Nunavut, a portion of mainland Northwest Territories, northern Manitoba, northern Ontario, and most of Quebec in Canada.

We consider the range of *C. l. occidentalis* to include Montana, Idaho, Wyoming, eastern Oregon and Washington, and most of Alaska in the United States, and the Yukon Territories, Northwest Territories, the western edge of mainland Nunavut, British Columbia, most of Alberta and Saskatchewan, and western and southern Manitoba in Canada.

Applying the process described above, we evaluated the range of *C. lupus, C. l. nubilus,* and *C. l. occidentalis* to determine if any portion of the ranges of these taxa warranted further consideration.

Canis lupus—As stated previously, populations of *C. lupus* occur in 46 countries and are distributed across several continents. Through our review we found evidence to indicate that at the regional level some populations are facing significant threats. For example *C. lupus* populations in the southwestern United States (see *C. l. baileyi* analysis above), on the Iberian Peninsula of Southern Spain, and in Central Europe (Linnell *et al.* 2008, p. 63), are significantly affected by illegal targeted elimination, small population size, and isolation. However, the species' large population levels elsewhere, high reproductive rate, dispersal capabilities, and expansive range relative to any of the threatened regional populations, along with the lack of any substantial information indicating otherwise, lead us to conclude that substantial threats are not occurring across enough of the range for any of these portions to be considered a significant portion of the range of *C. lupus.*

Canis lupus nubilus and *Canis lupus occidentalis*—Based on our evaluations (see *C. l. nubilus* and *C. l. occidentalis* analyses above) it is evident that *C. l. nubilus* and *C. l. occidentalis* populations are well distributed in Canada and currently represented in the WGL and NRM regions of the United States respectively. We evaluated the current ranges of *C. l. nubilus* and *C. l. occidentalis* to determine if there is any apparent geographic concentration of the primary stressors potentially affecting the subspecies, including human-caused mortality, habitat alteration, public attitudes/tolerance, and predator control. We found that over the vast majority of the range of each subspecies, the stressors affecting the species are both diffuse and minor. The areas that might possibly qualify as significant for one of the subspecies (*e.g.,* all of the Canadian Rockies for *C. l. occidentalis* or coastal British Columbia for *C. l. nubilus*) clearly do not face stressors of sufficient imminence, intensity, or magnitude for the subspecies to possibly be threatened there. Further, given the robust nature of *C. l. occidentalis* populations in Alaska and of *C. l. nubilus* in eastern Canada, even the Canadian Rockies and coastal British Columbia might not meet the threshold for ''significant'' described above even if substantial threats did exist there.

Conversely, any of the local areas in which there is a notable concentration of stressors (for example, intermountain valleys where human populations and agriculture are concentrated), are small and spread throughout the mountainous western part of the subspecies' ranges and generally surrounded by mountainous habitats with healthy wolf populations. The diffuse nature of these pockets where risk factors for wolves are concentrated reduce the importance of these areas on the conservation of the two subspecies. In addition, these pockets are individually so small that it is not possible for them to meet the threshold for significance set forth above. Further, even if there were no wolves in any of these pockets of increased risk, the much larger remaining areas of source populations would not be threatened, much less endangered, for all of the reasons discussed above. Wolf populations in North America have historically weathered large contractions in their geographic ranges without obvious adverse effects to populations in other areas.

Within the historical ranges of *C. l. nubilus* and *C. l. occidentalis,* plains populations from the contiguous United States and southern Canada were extirpated in the early 20th century and have not repopulated these areas. Despite the lack of wolf populations in the plains (where current agricultural practices are not compatible with wolf presence) both subspecies maintain secure populations over vast areas where effects from human activities have been less severe. Therefore, we find that there is not substantial information for either subspecies indicating that any portion may be both ''significant'' and in danger of extinction there or likely to become so within the foreseeable future.

Summary of Finding

In summary, we find that neither the 1978 listing nor the current *C. lupus* listed entity as it is described on the List represent valid ''species'' under the Act. We base this conclusion on the following: (1) The 1978 listing erroneously included the eastern United States a region of the contiguous United States that the best scientific information indicates is outside of the historical range of *C. lupus* (see *Wolf Species of the United States* section); (2) the *C. lupus* listed entity as it is currently described on the List derives from the 1978 listing and shares the same deficiency; and (3) the current listing suffers from the additional problem that there is not a reasonable correlation between the remaining population and the geographic scope of the listing. Therefore, the current *C. lupus* listed entity is not a ''species'' as defined by the Act, and we propose to remove it from the List in accordance with 16 U.S.C. 1533(c)(1).

We considered whether the currently listed entity should be replaced with a valid listing for (1) the *C. lupus* species, (2) a subspecies of *C. lupus* that occurs within the contiguous United States and Mexico, or (3) a DPS of *C. lupus* that includes part of the contiguous United States and Mexico. As required by the Act, we considered the five factors in assessing whether *C. lupus, C. l. nubilus, C. l. occidentalis,* or *C. l. baileyi* are threatened or endangered throughout all of its range. We examined the best scientific and commercial data available regarding the past, present, and future threats faced by these taxa. We reviewed the information available in our files and other available published and unpublished information, and we consulted with recognized experts and other Federal, state, and tribal agencies.

With respect to *C. lupus,* we find that, although the species has undergone significant range contraction in portions of its historical range, *C. lupus* continues to be widespread and, as a whole, is stable. We found no substantial evidence to suggest that *C. lupus* is at risk of extinction throughout its global range now or is likely to become so in the foreseeable future.

With respect to the North American subspecies *C. l. nubilus* and *C. l. occidentalis,* we find that wolves occupying *C. l. nubilus's* and *C. l. occidentalis's* historical ranges are widespread and exist as large, stable populations, with no evidence of decline over the last 10 years despite being subject to harvest over much of their range and population reduction actions in local areas. We did not identify any significant effects to these subspecies indicating that *C. l. nubilus* and *C. l. occidentalis* are in danger of extinction throughout their ranges and, therefore, neither subspecies meets the definition of an endangered species. *Canis lupus nubilus* and *C. l. occidentalis* are also not likely to become endangered within the foreseeable future throughout all of their ranges.

With respect to *C. l. baileyi,* we find that the subspecies is in danger of extinction throughout all of its range due to illegal killing, inbreeding, loss of heterozygosity, loss of adaptive potential, small population size, and the combination of factors B, C, and E. *Canis lupus baileyi* used to range throughout central and southern Arizona and New Mexico, a small portion of Texas, and much of Mexico. Its numbers were reduced to near extinction prior to protection by the Act in the 1970's, such that the captive-breeding program was founded with only seven wolves. Although our recovery efforts for *C. l. baileyi,* which are still under way, have led to the reestablishment of a wild population in the United States, the single, small population of *C. l. baileyi* would face an imminent risk of extinction from the combined effects of small population size, inbreeding, and illegal shooting, without the protection of the Act. Absent protection by the Act, regulatory protection, especially against shooting, poisoning, or other forms of killing, would not be adequate to ensure the survival of *C. l. baileyi.*

With respect to gray wolves in the Pacific Northwest (outside of the NRM DPS), recovery of wolf populations in the NRM DPS and southern British Columbia (British Columbia Ministry of Forests, Lands and Natural Resource Operations (2012, p. 4) has contributed to recolonization of new areas in eastern Washington and Oregon. While we know of resident wolves occupying territories in the western two thirds of Washington (outside the NRM DPS),

they do not currently constitute a ''population,'' and, therefore, the area cannot be defined as a DPS. Nevertheless, given ongoing recolonization and the lack of substantial dispersal barriers into the Pacific Northwest from populations to the north and east, wolves in the area are likely to meet our standard for a population in the near future. Therefore, we moved forward with a DPS analysis to see if such a likely future population would be discrete from existing populations in the Northern Rocky Mountains and British Columbia.

In the absence of identified barriers to intermixing, dispersal of wolves across the NRM DPS boundary is likely to continue such that a future wolf population in the Pacific Northwest is not likely to be discrete from wolves in the NRM DPS. Habitat linkages also connect occupied wolf habitat in British Columbia to available habitat in the Pacific Northwest (Carroll *in litt.* 2008, p. 8, Appendix A). It is reasonable to expect that the future population of wolves in the Pacific Northwest will be an extension, or part of, populations to the north and east, rather than a discrete population. Furthermore, the best available information does not indicate that wolves in the Pacific Northwest are likely to possess physiological, behavioral, or ecological traits that separate them from wolves in the Northern Rocky Mountains. Therefore, we find that wolves in the Pacific Northwest are not discrete from wolves in the Northern Rocky Mountains—rather they constitute the expanding front of large, robust, and recovered wolf populations to the north and east. Even if we considered a larger DPS, with a northern boundary extending into British Columbia, we would still find a lack of discreteness from the NRM DPS. Due to this lack of discreteness, wolves in the Pacific Northwest, whether considered in combination with wolves in British Columbia or alone, would not qualify as a distinct population segment under our 1996 DPS policy and are, therefore, not eligible for protection under the Act.

With respect to whether any of the relevant taxa is threatened or endangered in a significant portion of its range, we find that, although some regional populations of *C. lupus* are facing significant threats, the species' large population levels elsewhere, high reproductive rate, dispersal capabilities, and expansive range relative to any of the threatened regional populations leads us to conclude that the existing threats are not geographically concentrated in an area large enough to be considered a significant portion of the range of *C. lupus.* In addition, we evaluated the current ranges of *C. l. nubilus* and *C. l. occidentalis* to determine if there is any apparent geographic concentration of the primary stressors potentially affecting the subspecies. We found that, over the vast majority of the range of each subspecies, the stressors affecting the species are both diffuse and minor. The areas that might possibly qualify as significant for one of the subspecies clearly do not face stressors of sufficient imminence, intensity, or magnitude for the subspecies to possibly be threatened there. And any areas in which the local wolves might be threatened or endangered are so small and unimportant, individually or collectively, to qualify as significant portions of the range of the relevant taxa. Therefore, we find that there is not substantial information for either subspecies indicating that any portion may be both ''significant'' and in danger of extinction there or likely to become so within the foreseeable future.

Based on the best scientific and commercial information, we find that *C. lupus, C. l. nubilus,* and *C. l. occidentalis* are not in danger of extinction now, and are not likely to become endangered within the foreseeable future, throughout all or a significant portion of their ranges. Therefore, listing *C. lupus, C. l. nubilus,* or *C. l. occidentalis* as threatened or endangered under the Act is not warranted at this time.

Canis lycaon

Canis lycaon was proposed as the designation for the eastern wolf by Wilson *et al.* (2000), and Nowak (2009) provisionally stated that, if given species status, the name, *Canis lycaon,* would take precedence over any alternative scientific name; see also Brewster and Fritts 1995 and Goldman 1944. Since Wilson *et al.*'s (2000) proposed species designation, *C. lycaon* has been used by Wayne and Vila (2003), Grewal *et al.* (2004), Kyle *et al.* (2006), Chambers *et al.* (2012), Wilson *et al.* (2009), Rutledge *et al.* (2010a,b), and Rutledge *et al.* (2012).

Although the taxonomy of the eastern wolf is still being debated, we have considered the best information available to us at this time and concur with the recognition of *C. lycaon.* We understand that different conclusions may be drawn by taxonomists and other scientists depending on whether they give precedence to morphological or genetic data; however, we also agree with Thiel and Wydeven's (2012) observation that ''Genetics taxonomy is still undergoing rapid advances, and is replacing morphological taxonomy as the prime determinant in designating species.'' In considering the different lines of evidence, we conclude that the findings of the most recent analyses (Chambers *et al.* 2012 and Rutledge *et al.* 2012, both of which heavily rely on genetic data) represent the best available information.

We are proposing to delist the current *C. lupus* entity due, in part, to our recognition of the eastern wolf taxon as *C. lycaon,* rather than a subspecies of gray wolf (see Evaluation of the Current *C. lupus* Listed Entity). We now also have information concerning the conservation status of *C. lycaon* within its current range—the status review conducted by Thiel and Wydeven (2012). Before we can determine whether *C. lycaon* warrants listing as endangered or threatened, we must first address outstanding science and policy questions. We must consider treatment of wolf–coyote hybrids in terms of how they affect the identity of *C. lycaon* and whether they contribute to the species' viability. Also, we must assess whether the threats identified in Thiel and Wydeven (2012) indicate that the species meets the definition of a ''threatened species'' or an ''endangered species.'' In addition, we will coordinate with COSEWIC regarding its status assessment for *C. lycaon.*

Northeast Wolf Petition

On October 9, 2012, the Service received a petition dated September 26, 2012, from Mr. John M. Glowa, Sr., acting on behalf of himself as President of the Maine Wolf Coalition and 397 petition signatories. The petition requested continued protection under the Act for all wolves in the Northeast and a Northeast wolf recovery plan. Section 4 of the Act authorizes petitions to list, reclassify, or delist a species and to amend existing critical habitat designations. Section 553(e) of the Administrative Procedure Act (APA) provides interested parties the right to petition for the issuance, amendment, or repeal of a rule.

Because the gray wolf, *C. lupus,* is currently listed in the Northeast and no rulemaking is necessary to provide protection under the Act, we find that the request for continued protection of wolves under the Act in the Northeast is not petitionable under the Act at this time. Also, because no rulemaking is necessary to provide the Act's protection of wolves in the Northeast at this time, we dismiss this request under the APA. If this proposed rule is made final, however, any wolves that were to disperse to the northeast United States would no longer be protected under the

Act. As explained above, the Service is assessing the extent and status of *C. lycaon,* the species native to the northeastern United States; the outcome of this assessment will determine the need for the Act's protections.

With respect to the request for a Northeast wolf recovery plan, development and implementation of a recovery plan are not identified as petitionable actions under the Act. Also, because these actions do not meet the definition of a rule or rulemaking, they are not petitionable actions under the APA either. However, the outcome of our assessment of the extent and status of *C. lycaon* will determine the need for a recovery plan.

Proposed Determination

After a thorough review of all available information and an evaluation of the five factors specified in section 4(a)(1) of the Act, as well as consideration of the definitions of ''threatened species'' and ''endangered species'' contained in the Act and the reasons for delisting as specified in 50 CFR 424.11(d), we propose to remove the current *C. lupus* entity from the List of Endangered and Threatened Wildlife (50 CFR 17.11) and replace it with a listing for *C. l. baileyi* (Mexican wolf) as endangered wherever found. The currently listed *C. lupus* entity does not represent a valid listable entity under the Act, and *C. l. baileyi* is in danger of extinction throughout all of its range and thus warrants the protections of the Act.

We recognize recent taxonomic information indicating that the gray wolf subspecies *C. l. lycaon* should be elevated to the full species *C. lycaon.* However, as stated above, we are not prepared to make a determination on the conservation status of *C. lycaon* throughout its range in the United States and Canada at this time.

Effects of the Rule

This proposal, if made final, would remove the protections of the Act for the current *C. lupus* listing, by removing this entity from the List of Endangered and Threatened Wildlife.

This proposal, if made final, would list *C. l. baileyi* as an endangered subspecies.

This proposed rule has no effect on the existing nonessential experimental population designation for gray wolves in portions of Arizona, New Mexico, and Texas. However, as a matter of procedure, in a separate but concurrent rulemaking, we are also reproposing the nonessential experimental population to ensure appropriate association of the experimental population with the new *C. l. baileyi* listing. In addition, that proposed rule includes revisions to the regulations governing the management of the nonessential experimental population.

This proposed rule does not apply to the separate listing and protection of the red wolf *(C. rufus).* Furthermore, the remaining protections of *C. l. baileyi* under the Act do not extend to *C. l. baileyi*–dog hybrids.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We 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 of 1995

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We intend to coordinate the proposed rule with the affected Tribes 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 will fully consider all of the comments on the proposed rule that are submitted by Tribes and Tribal members during the public comment period and will attempt to address those concerns, new data, and new information where appropriate.

References Cited

A complete list of all references cited in this document is posted on *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2013–0073 and available upon request from the Arlington, Virginia, Headquarters Office (see **FOR FURTHER INFORMATION CONTACT**).

Data Quality Act

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

Authors

This proposed rule was a collaborative effort throughout, thus the primary authors of this rule are the staff members of the Services Endangered Species Program in the Idaho Fish and Wildlife Office, Boise, Idaho; the New Mexico Ecological Services Field Office, Albuquerque, New Mexico; the Midwest

Regional Office, Ft. Snelling, Minnesota; the Northeast Regional Office, Hadley, Massachusetts; the Montana Field Office, Helena, Montana; the Pacific Southwest Regional Office, Sacramento, California; and the Headquarters Office, Arlington, Virginia (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, 50 CFR part 17 is proposed to be amended as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) in the List of Endangered and Threatened Wildlife under Mammals by:

■ a. Removing both entries for ''Wolf, gray *(Canis lupus)''*; and

■ b. Adding two entries for ''Wolf, Mexican *(Canis lupus baileyi)''* in alphabetic order 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, Mexican	*Canis lupus baileyi*	Southwestern United States and Mexico.	Entire, except where included in an experimental population as set forth in 17.84(k).	E	.....	NA	NA
Wolf, Mexican	*Canis lupus baileyi*	Southwestern United States and Mexico.	U.S.A. (portions of AZ and NM)—see 17.84(k).	XN	.....	NA	17.84(k)
*	*	*	*	*	*		*

* * * * *

Dated: May 29, 2013.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–13982 Filed 6–12–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0056; FXES11130900000C2–134–FF09E32000]

RIN 1018–AY46

Endangered and Threatened Wildlife and Plants; Proposed Revision To the Nonessential Experimental Population of the Mexican Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise the existing nonessential experimental population designation of the Mexican wolf (*Canis lupus baileyi*) under section 10(j) of the Endangered Species Act of 1973, as amended. This action is being taken in coordination with our proposed rule in today's **Federal Register** to list the Mexican wolf as an endangered subspecies and delist the gray wolf (*Canis lupus*). The proposal to list the Mexican wolf as an endangered subspecies and delist the gray wolf species necessitates that we revise the nonessential experimental population designation of Mexican wolves in order to correctly associate this designation with the properly listed entity. In addition, we are proposing several revisions to the section 10(j) rule. We are seeking comment from the public on the proposed revisions and on additional possible modifications that we may analyze and incorporate into our final determination.

DATES: We will accept comments received on or before September 11, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by July 29, 2013. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before any such hearing.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for FWS–R2–ES–2013–0056, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0056; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Requested section below for more information). To increase our efficiency in downloading comments, groups providing mass submissions should submit their comments in an Excel file.

FOR FURTHER INFORMATION CONTACT: Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, NM 87113; by telephone 505–761–4704; or by facsimile 505–346–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

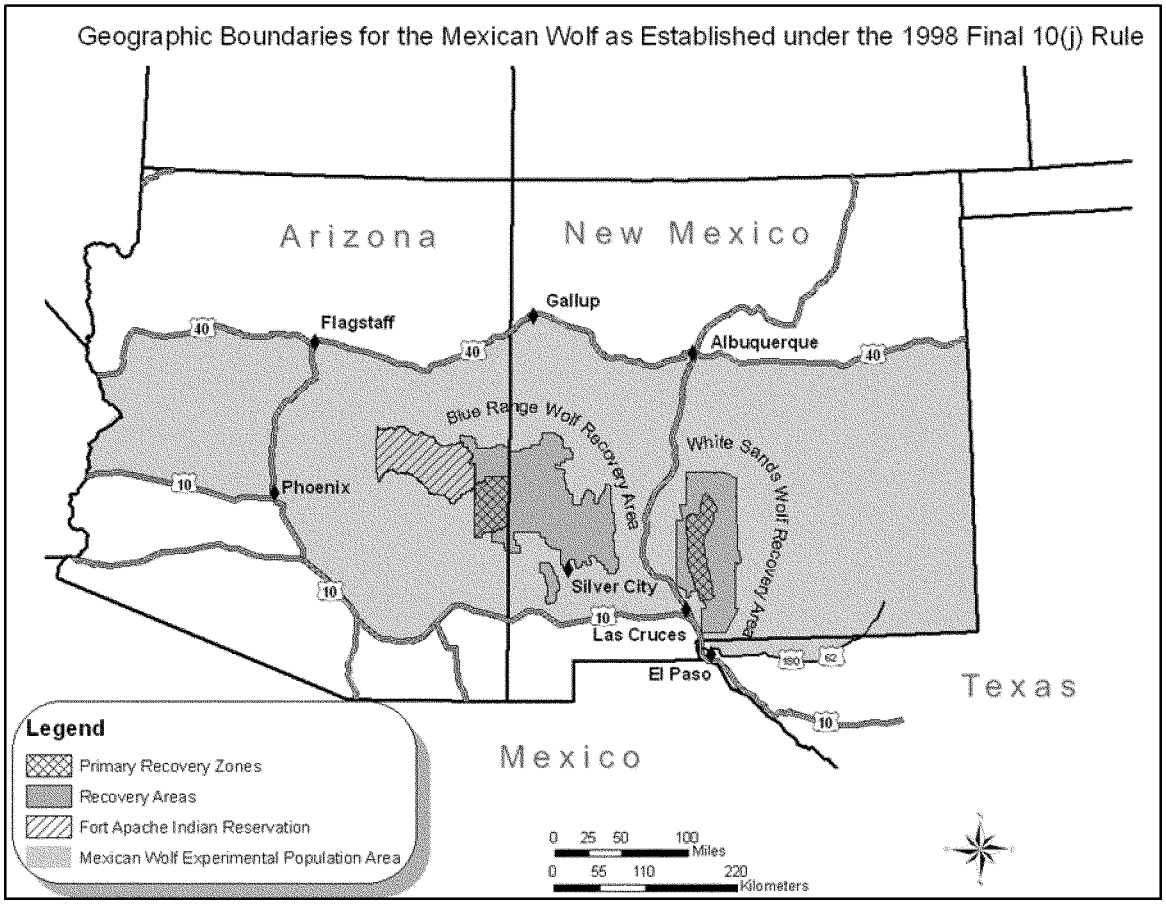
SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This rule is being proposed for two reasons: (1) To ensure this nonessential experimental population of Mexican wolves will be associated with the Mexican wolf subspecies listing, if finalized, rather than with the listing of the gray wolf at the species level; and (2) to allow for public comment on our proposed revisions and modifications to the 1998 final rule that established a Mexican wolf nonessential experimental population (63 FR 1752, January 12, 1998) (1998 Final Rule) (Figure 1).

In our 1998 Final Rule, we established two recovery areas (the Blue Range Wolf Recovery Area [BRWRA] and the White Sands Wolf Recovery Area) within the Mexican Wolf Experimental Population Area [MWEPA]. We established primary recovery zones within each of these recovery areas where initial releases of Mexican wolves would occur, while dispersal and translocations were allowed throughout the recovery areas. We also established provisions to remove Mexican wolves that occupied territories that were wholly outside of the recovery areas, or wolves that depredated on livestock outside of the recovery areas. Since 1998, we have only released Mexican wolves into the BRWRA; we have not utilized the White Sands Wolf Recovery Area. On tribal lands within the Mexican Wolf Experimental Population Area, we established provisions where the Service in cooperation with tribal government would develop management actions, including the capture and removal of Mexican wolves, if requested by the tribe. In 2000, the White Mountain Apache Tribe agreed to allow free-ranging Mexican wolves to inhabit the Fort Apache Indian Reservation, in accordance with this provision of the Final Rule. We recognize that continued occupancy of Mexican wolves on the Fort Apache Indian Reservation is dependent upon tribal agreement.

Figure 1—Geographic Boundaries for the Mexican Wolf under the 1998 Final Section 10(j) Rule.



This proposal is necessitated by a related action we are taking to propose the reclassification of the Mexican wolf (*Canis lupus baileyi*) as an endangered subspecies and delist the gray wolf species (*Canis lupus*). The Mexican wolf has been listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) under a species-wide gray wolf listing since 1978; therefore, when we designated the Mexican wolf nonessential experimental population in 1998 (63 FR 1752, January 12, 1998), it corresponded to the gray wolf listing in the Code of Federal Regulations (CFR) even though it was specific to our Mexican wolf recovery effort. With the proposed removal of the gray wolf from the List of Threatened and Endangered Wildlife and classification of the Mexican wolf as an endangered subspecies, we recognize the need to revise 50 CFR 17.11(h) such that the nonessential population will be

associated with the Mexican wolf subspecies listing rather than with the gray wolf species.

In order to improve implementation and conservation, we are proposing several changes to the section 10(j) rule and management regulations of the Mexican wolves.

The basis for our action. The 1982 amendments to the Act included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed). With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. Treating the experimental population as threatened allows us the discretion to devise management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt any regulations that are necessary and advisable to provide for the conservation of a threatened species. When designating an experimental population, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the section 10(j) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species.

We are preparing an environmental impact statement. We are preparing a draft Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To ensure that we consider the environmental impacts associated with this proposed rule, we are preparing a draft EIS to analyze the proposed nonessential experimental population of Mexican wolves. From October through December 2007, we conducted a public scoping process under NEPA based on our intent to modify the 1998 Final Rule. We developed a scoping report in April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We will utilize all information collected since that scoping process began in the development of a draft EIS. We will use information from this analysis to inform our final decision.

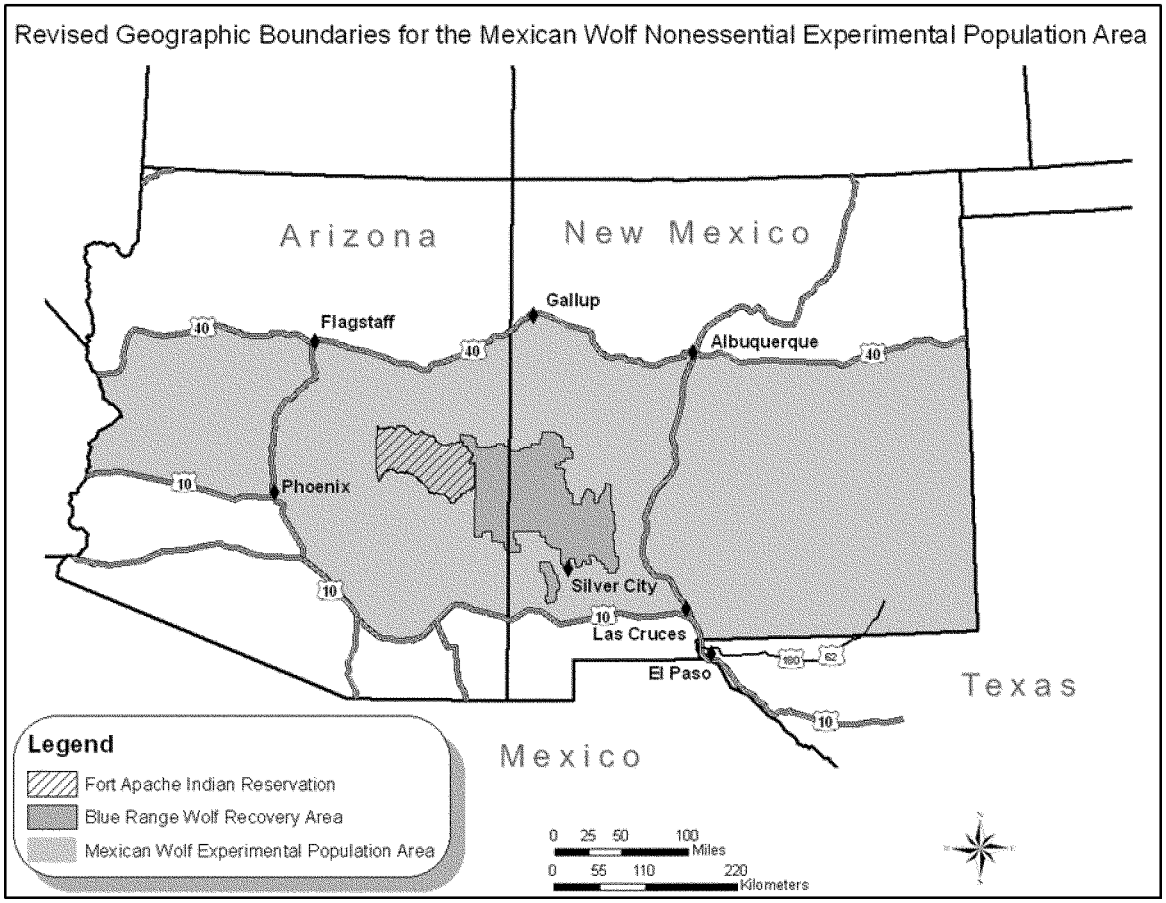
We will seek peer review. We will obtain opinions from knowledgeable individuals with scientific expertise on our technical assumptions, analysis, adherence to regulations, and whether or not we used the best available information. These peer reviewers will analyze our methods and conclusions and provide additional information, clarifications, and suggestions to improve the final determination. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal.

Information Requested

We are seeking public comments on this proposed rule. We are particularly interested in public comments on a number of specific issues we are proposing, and on other options being considered that are not included in today's proposed rule. We may include any of the modifications discussed in this proposed rule in our final determination. We particularly seek comments and information concerning the following revisions being proposed in today's action:

(1) Expanding the area for direct initial release of captive-raised Mexican wolves to include the entire BRWRA, thereby eliminating the primary and secondary recovery zones of the BRWRA (Figure 2).

Figure 2 —Revised Geographic Boundaries for the Mexican Wolf Nonessential Experimental Population Area.



(2) Allowing Mexican wolves to disperse naturally from the BRWRA into the Mexican Wolf Experimental Population Area (MWEPA) and occupy the MWEPA without the requirement to bring them back into the BRWRA (Figure 2).

(3) Removing the portion of west Texas lying north of US Highway 62/180 to the Texas–New Mexico boundary from the MWEPA (Figure 2).

(4) Removing reference to possible reintroduction of Mexican wolves to the White Sands Wolf Recovery Area (Figure 2).

(5) Developing and implementing management actions on private land within the MWEPA by the Service or an authorized agency to benefit Mexican wolf recovery in voluntary cooperation with private landowners, including but not limited to initial release, proactive measures to prevent conflicts, and translocation of wolves if requested by the landowner.

(6) Developing and implementing management actions on tribal land within the MWEPA by the Service or an authorized agency in voluntary cooperation with tribal governments including but not limited to initial release, translocation, proactive measures to prevent conflicts, capture, and removal of Mexican wolves if requested by the tribal government.

(7) Identifying section 6 of the Act as authorizing language for take pursuant to 50 CFR 17.31 for State wildlife agencies with authority to manage Mexican wolves under the nonessential experimental population rule.

(8) Clarifying that an individual can be authorized to take Mexican wolves under specific circumstances.

(9) Clarifying allowable take for Federal agencies and authorized personnel.

(10) Revising the conditions that determine when we would issue a permit to livestock owners or their agents to allow take of Mexican wolves that are engaged in the act of killing, wounding or biting livestock on public lands allotted for grazing from ''6 breeding pairs'' to ''100 Mexican wolves'' to be consistent with our population objective of establishing a population of at least 100 wolves.

(11) Modifying the prohibitions for take such that taking a Mexican wolf with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited and will not be considered unavoidable or unintentional take, unless due care was exercised to avoid injury or death to a Mexican wolf. Due care includes: (1) Following the regulations, proclamations, and/or laws within the State where the trapping takes place; (2) if securely fastening traps, use double stake traps, cable stakes (at least 18 inches (in) (46 centimeters (cm)) deep) or otherwise securely fasten traps to immovable objects with aircraft cable or chain so that if captured, a Mexican wolf is unable to pull the trap free; (3) if using drags, use one of sufficient size and weight or grapples made from steel at least 0.5 in (1.3 cm) in diameter of cross section attached to chains or cables; (4) reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service; and (5) not taking a Mexican wolf via neck snares.

Trappers can call the Interagency Field Team (IFT) (1–888–459–WOLF [9653]) as soon as possible to arrange for radio-collaring and releasing of the Mexican wolf. Per State regulations for releasing nontarget animals, trappers may also choose to release the animal alive and subsequently contact the Service or IFT. Taking a Mexican wolf by shooting will not be considered unavoidable or unintentional take.

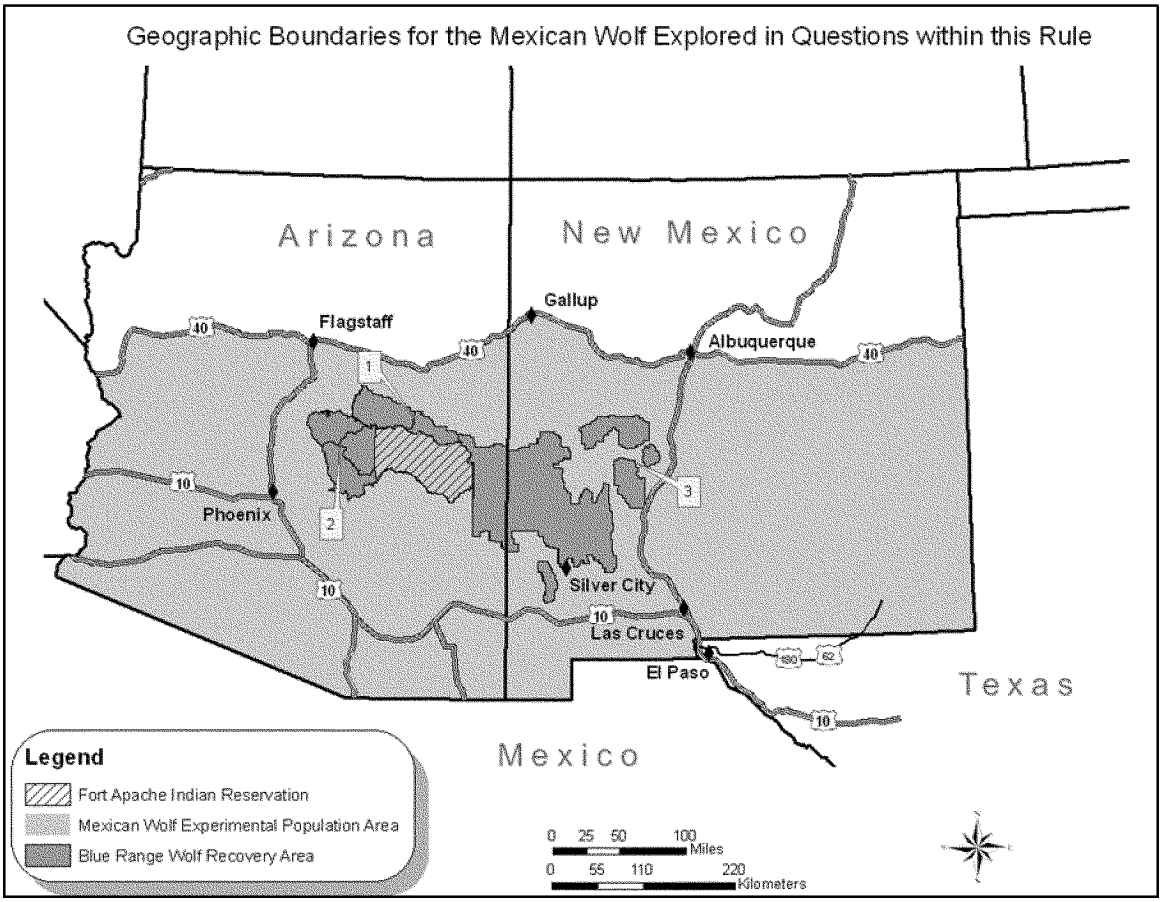
(12) Establishing a new provision to conduct a one-time overall evaluation of the nonessential experimental population 5 years after our final determination on this rule. We will still conduct a status review of the listed species once every 5 years as required by section 4(c)(2) of the Act.

(13) Clarifying that the Service will consider State-owned lands within the boundaries of the MWEPA in the same manner as we consider lands owned and managed by other public land management agencies.

We are also taking comments on the following options being considered for possible inclusion in the final rule, but not proposed in today's action:

(14) Moving the southern boundary of the MWEPA in Arizona and New Mexico from Interstate Highway 10 to the United States–Mexico international border (Figure 3).

Figure 3—Geographic Boundaries for the Mexican Wolf Explored in Questions within this Proposed Rule. (The geographic boundaries being considered for possible inclusion in the final rule include expansion of the BRWRA to include any or all of the ranger districts of the Sitgreaves National Forest (labeled as 1 in the map), three of the ranger districts within the Tonto National Forest (labeled as 2 in the map), one ranger district within the Cibola National Forest (labeled as 3 in the map), and expansion of the MWEPA boundary from I–10 south across Arizona and New Mexico to the United States–Mexico international border.)



(15) Expanding the BRWRA to include the entire Sitgreaves National Forest in Arizona;

(16) Expanding the BRWRA to include the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest in Arizona (Figure 3).

(17) Expanding the BRWRA to include the Magdalena Ranger District of the Cibola National Forest in New Mexico (Figure 3).

(18) Replacing the term ''depredation'' with the term ''depredation incident'' and defining it as, ''the aggregate number of livestock killed or mortally wounded by an individual Mexican wolf or single pack of Mexican wolves at a single location within one 24-hour period, beginning with the first confirmed kill or injury.''

(19) Including provisions for take by pet owners of any Mexican wolf engaged in the act of killing, wounding, or biting pets on private or tribal land anywhere within the MWEPA, provided that evidence of a freshly wounded or killed pet by wolves is present. The take must be reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(20) Including provisions for the issuance of permits on private or tribal land anywhere within the MWEPA to allow livestock owners or their agents to take (including kill or injure) any Mexican wolf that is present on private or tribal land and what conditions must be met before such a permit is issued, such as a minimum population size or population trend of Mexican wolves present in the MWEPA or other established populations based on the most recently reported population count; other relevant measures of population status such as genetic diversity; documentation by the Service or our authorized agent of previous loss or injury of livestock on the private or tribal land, caused by wolves; implementation of agency efforts to resolve the problem and determination that conflict is likely to continue; and enactment of this provision by a formal statement from the Service.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* at Docket No. FWS–R2–ES–2013–0056, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, tribes, the scientific community, industry, or other interested parties concerning this proposed rule. We request that you make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide.

Previous Federal Actions

The Mexican wolf was listed under the Act as an endangered subspecies in 1976 (41 FR 17736, April 28, 1976). In 1978, the Service listed the entire gray wolf species in North America south of Canada as endangered, except in Minnesota where it was listed as threatened (43 FR 9607, March 9, 1978). This 1978 listing at the species level subsumed the previous Mexican wolf subspecies listing. However, the 1978 listing rule (43 FR 9607, March 9, 1978) stated that we would continue to recognize the Mexican wolf as a valid biological subspecies for purposes of research and conservation.

After the 1978 listing, the Service initiated recovery programs for the gray wolf in three broad geographical regions of the country: the Northern Rocky Mountains, the Western Great Lakes, and the Southwest. In the Southwest, a recovery plan was developed specifically for the Mexican wolf, acknowledging and implementing the regional gray wolf recovery focus on the conservation of the Mexican wolf as a subspecies (Service 1982). The 1982 Mexican Wolf Recovery Plan did not provide recovery criteria, but recommended an initial two-pronged approach to recovery to establish a captive-breeding program and reintroduce captive Mexican wolves to the wild (Service 1982, p. 28).

In 1996, we completed a final EIS, ''Reintroduction of the Mexican Wolf within its Historic Range in the Southwestern United States,'' after assessing potential locations for reintroduction of the Mexican wolf (Service 1996). On April 3, 1997, the Department of the Interior issued its Record of Decision on the final EIS (62 FR 15915), and on January 12, 1998, we published a final rule in the **Federal Register** to establish the MWEPA in central Arizona and New Mexico, ''Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico'' (63 FR 1752).

Between 2003 and 2009, the Service published several rules revising the 1978 conterminous listing for the gray wolf in an attempt to recognize recovery progress achieved in the Northern Rocky Mountains and Western Great Lakes populations but leave the Mexican wolf in the southwestern United States and Mexico listed as endangered (except for the nonessential experimental population in Arizona and New Mexico) (68 FR 15804, April 1, 2003; 72 FR 6052, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15070 and 74 FR 15123, April 2, 2009). However, these revisions were challenged in court, which left the 1978 listing unchanged through 2010 (Service 2012, pp. 3–4).

Effective January 27, 2012, the Service designated a Western Great Lakes Distinct Population Segment (DPS) in Minnesota, Wisconsin, Michigan, and portions of adjacent States, and removed this segment from the List of Endangered and Threatened Wildlife (76 FR 81666, December 28, 2011). The Service removed the Northern Rocky Mountain DPS (Montana, Idaho, and portions of adjacent states, not including Wyoming) from the List of Endangered and Threatened Wildlife pursuant to Section 1713 of Public Law 112–10 on May 5, 2011 (76 FR 25590), and subsequently removed gray wolves in Wyoming from the List of Endangered and Threatened Wildlife on September 10, 2012 (77 FR 55530).

On August 4, 2010, we published a 90-day finding on two petitions to list the Mexican wolf as an endangered subspecies with critical habitat (75 FR 46894). In the 90-day finding, we determined that the petitions presented substantial scientific information that the Mexican wolf may warrant reclassification as a subspecies or DPS. As a result of this finding, we initiated a status review. On October 9, 2012, we published our 12-month finding in the **Federal Register** (77 FR 61375) stating that the listing of the Mexican wolf as a subspecies or DPS was not warranted at that time because Mexican wolves already receive the protections of the Act under the species-level gray wolf listing of 1978.

During 2011 and 2012, we conducted a 5-year review of the gray wolf finding that the entity currently described on the List of Endangered and Threatened Wildlife should be revised to reflect the distribution and status of gray wolf populations in the lower 48 States and Mexico by removing all areas currently included in its range, as described in the CFR, except where there is a valid species, subspecies, or DPS that is threatened or endangered (Service 2012).

From October through December 2007, we conducted a public scoping process under NEPA based on our intent to modify the 1998 Final Rule. We developed a final scoping report in

April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We will utilize the information collected during that scoping process in the development of a draft EIS.

Today, we concurrently proposed a rule in the **Federal Register** to delist the gray wolf as a species and list the Mexican wolf subspecies as endangered. The proposal to list the Mexican wolf as an endangered subspecies necessitates that we propose a revision to the nonessential experimental population of Mexican wolves in Arizona and New Mexico in order to correctly document this population as an experimental population of the Mexican wolf subspecies rather than the gray wolf species found in the current CFR. We are also proposing and seeking comment on a number of substantive modifications and technical corrections to the regulation governing the Mexican wolf nonessential experimental population designation.

Background

Our approach in this proposed rule is to refer to the 1998 Final Rule as necessary to describe the current situation and the changes we are proposing, and to propose new language where appropriate at this time.

Species Information

The Mexican wolf is the smallest extant gray wolf subspecies in North America. Adults weigh 50 to 90 pounds (lb) (23 to 41 kilograms (kg)) with a length of 5 to 6 ft (1.5 to 1.8 m) and height at shoulder of 25 to 32 in (63 to 81 cm) (Brown 1988, p. 119). Mexican wolves are typically a patchy black, brown to cinnamon, and cream color, with primarily light underparts (Brown 1988, p. 118). Solid black or white coloration, as seen in other North American gray wolves, does not exist in Mexican wolves. The basic life history for the Mexican wolf is similar to that of other gray wolves (Mech 1970, entire; Service 1982, p. 11; Service 2010, pp. 32–41).

Historically, Mexican wolves were distributed across portions of the southwestern United States and northern and central Mexico. In the United States, this range included eastern, central, and southern Arizona; southern New Mexico; and western Texas (Brown 1983, pp. 10–11; Parsons 1996, pp. 102–104). Maps of Mexican wolf historical range are available in the scientific literature (Young and Goldman 1944, p. 414; Hall and Kelson, 1959, p. 849; Hall 1981, p. 932; Bogan and Mehlhop 1983, p. 17; Nowak 1995, p. 395; Parsons 1996, p. 106). The southernmost extent of the Mexican wolf's range in Mexico is consistently portrayed as ending near Oaxaca (Hall 1981, p. 932; Nowak 1995, p. 395). Depiction of the northern extent of the Mexican wolf's pre-settlement range among the available descriptions varies depending on the authors' taxonomic treatment of several subspecies and their interpretation of where reproductive interaction between neighboring wolf populations occurred (see today's **Federal Register** publication of the Proposed Rule Removing the Gray Wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (*Canis lupus baileyi*) by Listing it as Endangered).

Mexican wolves were associated with montane woodlands characterized by sparsely to densely forested mountainous terrain consisting of evergreen oaks (*Quercus* spp.) or pinyon (*Pinus edulus*) and juniper (*Juniperus* spp.) to higher elevation pine (*Pinus* spp.), mixed-conifer forests, and adjacent grasslands at elevations of 4,000 to 5,000 ft (1,219 to 1,524 m) where ungulate prey were abundant. Mexican wolves were believed to have preyed upon white-tailed deer (*Odocoileus virginianus*), mule deer (*O. hemionus*), elk (*Cervus elaphus*), collared peccaries (javelina) (*Tayassu tajacu*), pronghorn (*Antilocapra americana*), bighorn sheep (*Ovis canadensis*), jackrabbits (*Lepus spp.*), cottontails (*Sylvilagus spp.*), and small rodents (Parsons and Nicholopoulos 1995, pp. 141–142); white-tailed deer and mule deer were believed to be the primary sources of prey (Brown 1988, p. 132; Bednarz 1988, p. 29).

Today, Mexican wolves in Arizona and New Mexico inhabit evergreen pine-oak woodlands (i.e., Madrean woodlands), pinyon-juniper woodlands (i.e., Great Basin conifer forests), and mixed-conifer montane forests (i.e., Rocky Mountain, or petran, forests) that are inhabited by elk, mule deer, and white-tailed deer (Service 1996, pp. 3–5; AMOC and IFT 2005, p. TC–3). Mexican wolves in the BRWRA show a strong preference for elk compared to other ungulates (Adaptive Management Oversight Committee (AMOC) and Interagency Field Team (IFT) 2005, p. TC–14, Reed *et al.* 2006, pp. 56, 61; Merkle *et al.* 2009, p. 482). Other documented sources of prey include deer and occasionally small mammals and birds (Reed *et al.* 2006, p. 55). Mexican wolves are also known to prey and scavenge on livestock (Merkle *et al.* 2009, p. 482; Breck *et al.* 2011, entire; Reed *et al.* 2006, p. 1129; AMOC and IFT 2005, p. TC–15)).

Recovery Efforts

The United States and Mexico signed the Mexican Wolf Recovery Plan in 1982 (Service 1982). The recovery plan did not contain objective and measurable recovery criteria for delisting as required by section 4(f)(1) of the Act because the status of the Mexican wolf was so dire that the recovery team could not foresee full recovery and eventual delisting (Service 1982, p. 23). Instead, the recovery plan contained a ''prime objective'' to ensure the immediate survival of the Mexican wolf. The prime objective of the 1982 recovery plan was: ''To conserve and ensure the survival of *Canis lupus baileyi* by maintaining a captive breeding program and reestablishing a viable, self-sustaining population of at least 100 Mexican wolves in the middle to high elevations of a 5,000-square-mi area (12,950-square-km) within the Mexican wolf's historic range'' (Service 1982, p. 23). This objective has since guided the recovery effort for the Mexican wolf in the United States.

A binational captive-breeding program between the United States and Mexico, referred to as the Mexican Wolf Species Survival Plan (SSP), was initiated in 1977 to 1980 with the capture of the last remaining Mexican wolves in the wild in Mexico and subsequent addition of wolves from captivity in Mexico and the United States. Through the breeding of the 7 founding Mexican wolves and generations of their offspring, the captive population has expanded to its current size of close to 258 wolves in 52 facilities, including 34 facilities in the United States and 18 facilities in Mexico (as of October 12, 2012) (Siminski and Spevak 2012, p. 2).

The primary purpose of the SSP is to raise Mexican wolves for the Service and the General del Vida Silvestre (in Mexico) for reintroduction into the wild. This program is an essential component of Mexican wolf recovery. Specifically, the purpose of the SSP is to reestablish the Mexican wolf in the wild through captive breeding, public education, and research. This captive population is the sole source of Mexican wolves available to reestablish the species in the wild and is imperative to the success of reintroduction efforts in the United States and Mexico.

Reintroduction efforts to reestablish the Mexican wolf in the wild have taken place in both the United States and Mexico. Mexico initiated a reintroduction program with the release of five captive-bred Mexican wolves

into the San Luis Mountains just south of the United States–Mexico border in October 2011. As of February 2012, four of the five released animals were confirmed dead due to ingestion of illegal poison. The status of the fifth Mexican wolf is unknown. A sixth Mexican wolf was released in March 2012; its fate is unknown as only its collar was found in April 2012 (Service, our files). A pair of Mexican wolves was released in October 2012 and was alive as of March 3, 2013. Mexico plans to release additional Mexican wolves in this area, and possibly several other identified locations (including Nuevo Leon and Coahuila) in Mexico in 2013 and beyond; however, a schedule of releases is not publicly available at this time. We expect the number of Mexican wolves in Mexico to fluctuate from zero to several wolves or packs of wolves during 2013 and into the future in or around Sonora and Chihuahua or other Mexican States.

In the United States, we have focused our recovery efforts on the reestablishment of Mexican wolves as a nonessential experimental population under section 10(j) of the Act in Arizona and New Mexico. We established the nonessential experimental population of Mexican wolves in 1998 to pursue the prime objective of the 1982 Mexican Wolf Recovery Plan (Figure 1). The reintroduction project is a collaborative effort conducted by the Service, Forest Service, Arizona Game and Fish Department, White Mountain Apache Tribe, and U.S. Department of Agriculture's Animal and Plant Health Inspection Service.

In March of 1998 we released 11 Mexican wolves from the captive-breeding program to the wild. Additional individuals and family groups have been initial-released or translocated into the BRWRA each year through 2012. Initial-released refers to Mexican wolves released to the wild that have only been in captivity, and translocated wolves are ones with previous wild experience that were removed from the wild for management reasons and subsequently rereleased into the wild at a later time.

We expect to pursue additional recovery efforts for the Mexican wolf outside of the MWEPA in the future and to determine the capacity of the nonessential experimental population to contribute to recovery. We initiated the revision of the 1982 Mexican Wolf Recovery Plan in 2010. The revised plan will provide information about suitable habitat and population sizes for Mexican wolf recovery in the United States and Mexico. A draft plan will be provided for public and peer review before being finalized.

More information about the life history, decline, and current status of the Mexican wolf in the southwestern United States can be found in the ''Proposed Rule Removing the Gray Wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (*Canis lupus baileyi*) by Listing it as Endangered'' (published elsewhere in today's **Federal Register**), the 1982 Mexican Wolf Recovery Plan (Service 1982, pp. 5–8, 11–12), the 1996 FEIS (Service 1996, pp. 1–7), the 1998 Final Rule (63 FR 1752, January 12, 1998), the Mexican Gray Wolf Blue Range Reintroduction Project 5-Year Review (Mexican Wolf Blue Range Adaptive Management Oversight Committee and Interagency Field Team 2005, pp. TC–1 to TC–2), the Mexican Wolf Conservation Assessment (Service 2010, pp. 7–15, 20–42), and Mexican Wolf Recovery Program Progress reports from 2001 to 2011. These documents are available on-line at *http://www.fws.gov/southwest/es/mexicanwolf.*

Why We Need to Revise the 1998 Final Rule

We are proposing to modify the MWEPA designation to improve our ability to establish a viable, self-sustaining population of at least 100 Mexican wolves in the wild, which is the population objective provided in the 1982 Mexican Wolf Recovery Plan. Over time and through project reviews, annual reports, monitoring, and communication with our partners and the public, we recognize that elements of the 1998 Final Rule designation need to be revised to help us enhance the growth, stability, and success of the nonessential experimental population. Specifically, the 1998 Final Rule currently restricts initial releases of captive Mexican wolves to the wild to the Primary Recovery Zone, which constitutes only 16 percent of the BRWRA. This has constrained the number and location of Mexican wolves that can be released into the wild. Also, the 1998 Final Rule has a requirement that Mexican wolves stay within the BRWRA, which does not allow for natural dispersal movements from the BRWRA or occupation of the MWEPA. Currently, we are required to implement management actions that disrupt social structure or lead to removal of wolves from the wild when a Mexican wolf naturally disperses from the BRWRA into the MWEPA. In addition, we are proposing a number of modifications that will improve our communication and coordination implementing the nonessential experimental population designation. We intend our actions to demonstrate an adaptive management approach in which we utilize the lessons learned since we began reestablishing Mexican wolves in 1998.

Statutory and Regulatory Framework

The Act provides that species listed as endangered are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act, among other things, prohibits the take of endangered wildlife. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range, but within its probable historical range. With the experimental population designation, the relevant population is treated as threatened, regardless of the species' designation elsewhere in its range. Threatened status allows us discretion in devising management programs and special regulations for such a population through the use of section 4(d) of the Act. Section 4(d) allows us to adopt any regulations that are necessary and advisable to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the section 10(j) rule

contains the prohibitions and exemptions necessary and appropriate to conserve that species.

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that such release will further the conservation of the species. In making such a finding, the Service uses the best scientific and commercial data available to consider: (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) the likelihood that any such experimental population will become established and survive in the foreseeable future; (3) the relative effects that establishment of an experimental population will have on the recovery of the species; and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

Furthermore, as set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and contain the experimental population designated in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

Based on the best scientific and commercial data available, we must determine whether the experimental population is essential or nonessential to the continued existence of the species. The regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential.

For the purposes of section 7 of the Act, we treat a nonessential experimental population as a threatened species when it is located within a National Wildlife Refuge or unit of the National Park Service, and Federal agency conservation requirements under section 7(a)(1) and the Federal agency consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When a nonessential experimental population is located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing and only section 7(a)(1) and section 7(a)(4) apply. In these instances, a nonessential experimental population provides additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Because the nonessential experimental population is, by definition, not essential to the continued existence of the species, the effects of proposed actions affecting the nonessential experimental population will generally not rise to the level of jeopardizing the continued existence of the species. As a result, a formal conference will likely never be required for Mexican wolves established within the nonessential experimental population area. Nonetheless, some agencies voluntarily confer with the Service on actions that may affect a proposed species. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish a nonessential experimental population.

Proposed Experimental Population Area

We are continuing our effort to establish a population of Mexican wolves within the subspecies' historical range in Arizona and New Mexico by proposing to revise the 1998 Final Rule (63 FR 1752, January 12, 1998). The current and proposed revision to the experimental population area is the entirety of the species' current range in the United States. The purpose of the nonessential experimental population was, and remains, to accomplish the prime objective of the 1982 Mexican Wolf Recovery Plan to establish a viable, self-sustaining population of at least 100 Mexican wolves in the wild (Service 1982, p. 23).

With this rule, we propose to revise the geographic boundaries of the MWEPA described in the 1998 Final Rule by removing the small portion of the MWEPA in Texas. This area is not likely to contribute substantially to our population objective based on habitat suitability. The proposed MWEPA is the geographic area lying north of Interstate Highway 10 and south of Interstate Highway 40 in Arizona and New Mexico (Figure 2).

Also, we are proposing to maintain the geographic boundaries of the BRWRA as described in our 1998 Final Rule (i.e., the Apache National Forest in Arizona and the Gila National Forest in New Mexico), but to eliminate the primary and secondary recovery zones inside the BRWRA (Figure 2). We are proposing to modify the regulations associated with initial releases within the BRWRA and the regulations associated with natural dispersal of Mexican wolves from the BRWRA into the MWEPA; both of these modifications are described below in Management of the Reintroduced Population.

We are not carrying forward the recommendation from the 1998 Final Rule to consider the White Sands Wolf Recovery Area as a possible

reintroduction site for Mexican wolves (Figure 2). Under the 1998 Final Rule, initial releases and reintroduction of Mexican wolves into the White Sands Wolf Recovery Area is authorized if the Service finds it necessary and feasible in order to achieve the recovery goal of at least 100 Mexican wolves occupying 5,000 square mi (12,950 square km) (Service 1998). While this recovery area lies within the probable historical range of the Mexican wolf, and could be an important reestablishment site if prey densities increased substantially, it is now considered a marginally suitable area for Mexican wolf release and reestablishment primarily due to the low density of prey. For these reasons the Mexican Wolf Blue Range Reintroduction Project 5-Year Review recommended that any amended or new Mexican wolf nonessential experimental population rule not include White Sands Missile Range as a Mexican Wolf Recovery Area or as a reintroduction zone (AMOC and IFT 2005, p. ARC–3).

Additional Revisions to the Previous Experimental Population Area Under Consideration

As stated above (see Information Requested section), we are also taking comments on the following options being considered for possible inclusion in the final rule, but not proposed in today's action. Thus, depending upon the information we receive during the public comment period and our own further analysis, our final rule may include these actions.

We are considering expanding the MWEPA by moving the southern boundary from Interstate Highway 10 to the United States-Mexico international border across Arizona and New Mexico (Figure 3). Expanding the MWEPA was a recommendation in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC–3). We are considering this modification because a larger MWEPA would provide additional habitat for dispersal while promoting management flexibility and consistency in management over a larger area (as opposed to Mexican wolves in this area having full endangered status).

We are also considering the expansion of the BRWRA to include the entire Sitgreaves National Forest and the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest in Arizona and the Magdalena Ranger District of the Cibola National Forest in New Mexico (Figure 3). This expansion would include the proposed modification that would allow for initial releases and translocations throughout the expanded BRWRA. Our proposed modification to eliminate the primary and secondary recovery zones within the BRWRA and our consideration of expanding the BRWRA to include the entire Sitgreaves and three Ranger Districts of the Tonto National Forests in Arizona and one Ranger District of the Cibola National Forest in New Mexico are consistent with recommendations in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC–4). These revisions would provide additional area and locations for initial release of Mexican wolves to the wild from captivity beyond that currently allowed by the 1998 Final Rule.

Reintroduction Procedures

In our 1998 Final Rule, we stated that we would release 14 family groups of Mexican wolves into the BRWRA over a period of 5 years to achieve our goal of establishing a population of at least 100 wild Mexican wolves. Selection criteria for Mexican wolves that are released include genetics, reproductive performance, behavioral compatibility, response to the adaptive process, and other factors (63 FR 1754, January 12, 2998). Since the end of that initial 5-year period in 2003, we have continued to conduct initial releases of Mexican wolves from captivity into the BRWRA and to translocate wolves with previous wild experience back into the BRWRA.

We are proposing to revise selection criteria for Mexican wolves that are released into the wild by including sex and age as selection criteria, including specifying our reasons for conducting initial releases, as follows in the paragraph below:

Captive Mexican wolves are selected for release based on genetic contribution to the wild population, reproductive performance, behavioral compatibility, prior behavior, sex, age, response to the adaptation process, and other factors. Mexican wolves selected for release may be acclimated in Service-approved prerelease facilities or released directly into the BRWRA. Initial release of Mexican wolves into the BRWRA will be conducted on an as-needed basis to assist with population growth or maintenance, genetics management, and other relevant considerations.

Management of the Experimental Population Area

The nonessential experimental designation enables the Service to develop measures for management of the population that are less restrictive than the mandatory prohibitions that protect species with endangered status. This includes allowing limited take of individual Mexican wolves under narrowly defined circumstances (50 CFR 17.84(k)(6)). Management flexibility is needed to make reintroduction compatible with current and planned human activities, such as livestock grazing and hunting. It is also critical to obtaining needed State, tribal, local, and private cooperation. The Service believes this flexibility has and will continue to improve the likelihood of success of this reestablishment effort. Management of Mexican wolves in the BRWRA and MWEPA may include any of the provisions herein or provided for in Service-approved management plans, protocols, and permits.

We are proposing to allow for initial releases of captive-raised Mexican wolves throughout the entire BRWRA, which would eliminate the primary and secondary recovery zones defined in the 1998 Final Rule. We previously defined a primary recovery zone to mean an area where the Service: (1) Will release captive-raised Mexican wolves, (2) may return and rerelease previously released Mexican wolves, (3) may release translocated wild-born Mexican wolves, and (4) will actively support recovery of the reintroduced population. We previously defined the secondary recovery zone to be an area adjacent to a primary recovery zone in which the Service allows released Mexican wolves to disperse, where wolves captured in the wild for authorized management purposes may be translocated and released, and where managers actively support recovery (63 FR 1772, January 12, 1998). If this proposed rule is finalized, the distinction between the primary and secondary recovery zones related to initial releases and other management actions will be eliminated, thereby eliminating the need to retain or define these zones. With our current proposal, we would apply a consistent management regime for all Mexican wolves in the BRWRA.

The purpose of this proposed change to allow initial releases throughout the BRWRA is to expand the area and locations for potential initial release sites. This flexibility will support our efforts to achieve the prime objective of the 1982 Mexican Wolf Recovery Plan and the specified reintroduction goal of the 1998 Final Rule to establish a viable, self-sustaining population of at least 100 Mexican wolves in the wild. That is, we expect that expanding the area and locations for potential release sites will support population growth for several reasons. First, allowing initial release of captive Mexican wolves into the entire BRWRA will increase our opportunities to conduct initial releases. Because Mexican wolf packs have established home ranges in the primary recovery

zone, which encompasses only 16 percent of the BRWRA, we are constrained in our ability to release additional family groups from captivity into this occupied habitat. Only two captive-raised Mexican wolves have been released into the BRWRA in the last 6 years for this reason.

Second, this modification will allow us to conduct initial releases into optimal release sites in remote locations such as the Gila and Aldo Leopold Wilderness Areas. These large wilderness areas provide roadless habitat, have very low human population density, and limited livestock grazing, which are characteristics that support the establishment of Mexican wolves while reducing the potential for wolf–human conflict.

Third, this modification would also allow us to improve our ability to support the genetic health of the population in that we would have more opportunities to replace genetically important Mexican wolves that die or are removed from the population with captive wolves with similar genetic makeup.

Finally, this modification, assuming it led to a larger, more viable population, would result in a population more tolerant of the loss of individuals. Being able to lose individuals from a larger population would have less effect on the subspecies, as a whole, and support our ability to respond to Mexican wolf–livestock conflicts and increase our overall management flexibility.

We are proposing to allow Mexican wolves in the BRWRA to disperse throughout the BRWRA and into the MWEPA, and to occupy the MWEPA (Figure 2). The 1998 Final Rule did not allow Mexican wolves to disperse from the BRWRA into the MWEPA. Management of Mexican wolves in the BRWRA and MWEPA may include hazing, translocations, lethal take, and other necessary actions, as provided for in this proposed rule and in Service-approved management plans and protocols. We are proposing to allow Mexican wolves to disperse naturally from the BRWRA into the MWEPA and to occupy the MWEPA because this modification will promote numeric and spatial expansion of the population, assisting us in reaching our population objective. We intend to capture and return Mexican wolves originating from the nonessential experimental population that disperse outside of the MWEPA.

There are two situations in which a Mexican wolf could occur in the southwestern United States outside of the MWEPA: (1) A Mexican wolf may disperse outside of the MWEPA without our knowledge; or (2) Mexican wolves may disperse into the United States from Mexico. Any Mexican wolf outside of the MWEPA will have full endangered status under the Act. The public is encouraged to contact the Mexican Wolf Recovery Coordinator or a designated representative of the Service to determine if there is the potential for take in areas where Mexican wolves are listed as endangered. Any trappers concerned that they might incidentally take an endangered Mexican wolf can apply for a section 10(a) permit.

Within the MWEPA, we are proposing the development and implementation of management actions to benefit Mexican wolf recovery in cooperation with private landowners, including but not limited to initial release and translocation of Mexican wolves on private land if requested by the landowner, and on tribal land in cooperation with tribal governments including but not limited to initial release, translocation, capture, and removal of wolves if requested by the tribal government.

On public land grazing allotments we will continue to offer permits under the Act to allow livestock owners or their agents to take a Mexican wolf engaged in the act of killing, wounding, or biting livestock, but we propose to change the condition of requiring 6 breeding pairs in the population prior to issuance of a such a permit to requiring 100 Mexican wolves in the MWEPA based on the most recent population count. We originally established the 6 breeding pair metric to serve as an indication that the overall size and status of the population was appropriate to allow additional regulatory flexibility in our management. However, we have learned that the number of breeding pairs in the population does not necessarily serve as a surrogate for population size. Therefore, we are proposing a more direct method of deciding when to allow additional regulatory flexibility by basing our determination on the number of Mexican wolves in the MWEPA population. We will continue to track breeding pairs as a population metric, but will not use this number as a basis for the level of regulatory flexibility.

Additional Revisions to the Management of the Experimental Population Area Under Consideration

As stated above (see Information Requested section), we are also taking comments on the following options being considered for possible inclusion in the final rule, but not proposed in today's action. Thus, depending upon the information we receive during the public comment period and our own further analysis, our final rule may include these actions.

We are considering including provisions for take by pet owners of any Mexican wolf engaged in the act of killing, wounding, or biting pets on private or tribal land anywhere within the MWEPA, provided that evidence of a freshly wounded or killed pet by wolves is present. Such take must be reported to the Service or an authorized agent within 24 hours. We would modify our definition of ''engaged in the act of killing, wounding, or biting livestock'' to also apply to pets. We are considering this modification in order to provide the same provisions for pets as we do for livestock on private and tribal land in an effort to reduce wolf-related conflicts for humans and their animals. We estimate that this may result in the take of at most two wolves per year.

We are considering including provisions for the issuance of permits on private land anywhere within the MWEPA to allow livestock owners or their agents to take (including kill or injure) any Mexican wolf that is present on private land. We would establish conditions that must be met before such a permit is issued, such as a minimum population size of Mexican wolves present in the MWEPA or other established populations based on the most recently reported population count; other relevant measures of population status such as genetic diversity; documentation by the Service or our authorized agent of previous loss or injury of livestock on the private land, caused by Mexican wolves; completion of agency efforts to resolve the problem; and enactment of this provision by a formal statement from the Service. We are considering this provision to reduce wolf-livestock conflicts and provide livestock owners and their agents with more options for resolving such conflicts.

Both of these considerations demonstrate a balanced approach to our reestablishment efforts such that as we pursue measures to expand the number and distribution of Mexican wolves in the experimental population we also increase our management flexibility, including identification of circumstances in which take may be appropriate. A larger, more widespread population would be less affected by the limited take under consideration than the small, restricted population that currently exists entirely within the BRWRA.

Identification and Monitoring

Prior to release from captivity into the wild, adult-sized Mexican wolves will receive permanent identification marks and radio collars, as appropriate. Pups and uncollared adult Mexican wolves within the current BRWRA population are routinely captured and given permanent identification marks and radio collars. While not all Mexican wolves are radio-collared, we attempt to maintain at least two radio collars per pack in the wild. Radio collars allow the Service to monitor reproduction, dispersal, survival, pack formation, depredations, predation, and a variety of other important biological metrics. We do not foresee a scenario where we would not continue an active monitoring strategy for Mexican wolves. However, we also recognize that a majority of wild Mexican wolves may not have radio collars as the population grows, due to the difficulty of capturing them.

The Service will measure the success or failure of the releases by monitoring, researching, and evaluating the status of released Mexican wolves and their offspring. Using adaptive management principles, the Service will continue to modify subsequent releases depending on what is learned. We will prepare periodic progress reports, annual reports, and publications, as appropriate, to evaluate release strategies.

The 1998 Final Rule contained requirements to conduct full evaluations of the status of the nonessential experimental population after 3 and 5 years. As part of the evaluations, a recommendation would be made for continuation, modification, or termination of the reintroduction project. Both evaluations were conducted and recommendations were made to continue the nonessential experimental population with modifications. These reviews were intensive efforts that included Service staff, other Federal, State, and tribal agencies, independent experts, and public involvement. In this proposed rule, we propose a one-time full evaluation of the revised nonessential experimental population rule 5 years after any final determination has been made to revise the existing 10(j) regulation; the evaluation should focus on modifications needed to improve the efficacy of reestablishing Mexican wolves to the wild and the contribution the nonessential experimental population is making to the recovery of the Mexican wolf. We do not consider a 3-year review to be necessary, as we included this provision in the 1998 Final Rule to address the substantial uncertainties we had with reestablishing captive Mexican wolves to the wild. Therefore, a one-time program review conducted 5 years after our final determination will provide an appropriate interval to assess the effectiveness of the project. This one-time program review is separate from the status review of the listed species that we will conduct once every 5 years as required by section 4(c)(2) of the Act.

Mexican Wolf Experimental Population Findings

As discussed in the *Statutory and Regulatory Framework* section, several findings are required before establishing an experimental population. Below are our findings.

Is the experimental population wholly separate geographically from nonexperimental populations of the same species?

Prior to the first release of Mexican wolves in 1998, the Service ensured that no population of naturally occurring wild wolves existed within the recovery areas under consideration (in the United States) or in Mexico. Currently, no populations or individuals of the Mexican wolf subspecies are known to exist in the United States outside of the BRWRA. Due to the active reestablishment effort Mexico initiated in 2011, two confirmed Mexican wolves are known to exist in the wild approximately 130 mi (209 km) south of the United States-Mexico international border. The two Mexican wolves in Mexico are approximately 180 mi (290 km) straight-line distance from the southern boundary of the current MWEPA. Thus, the two areas are neither adjacent to nor overlapping each other.

The Mexican wolves in Mexico do not meet the definition of a population that we have consistently used in our gray wolf experimental population rules, which is, at least 2 breeding pairs of gray wolves that each successfully raised at least two young annually for 2 consecutive years (59 FR 60252, November 22, 1994). This definition represents what we have determined to be the minimum standards for a gray wolf population (Service 1994). The courts have supported this definition and thus upheld our interpretation that pairs must breed to have a ''population'' (*Wyoming Farm Bureau Federation* v. *Babbitt,* 199 F.3d 1224, 1234 (10th Cir. 2000); *U.S.* v. *McKittrick,* 142 F. 3d 1170, 1175 (9th Cir. 1998), cert. denied, 525 U.S. 1072 (1999)). Based on the results of Mexico's efforts in 2011 and 2012, we can only speculate that the number of Mexican wolves in Mexico will fluctuate over the next few years from zero to several wolves or packs of wolves depending on mortalities, future releases, and successful breeding (in the wild) of released wolves. Therefore, we consider it unlikely for a population that meets our definition to be established in northern Mexico any time soon and certainly no such population exists currently.

Based on the fact that there are currently no populations of Mexican wolves in the United States or Mexico other than the BRWRA population, we find that the nonessential experimental population is wholly geographically separate. If a population is successfully established in the future due to Mexico's efforts, it is possible that an occasional Mexican wolf from Mexico may disperse into the United States. Interconnectivity between Mexican wolves in Mexico and in the MWEPA in the future could benefit recovery of the Mexican wolf by providing genetic interchange between populations.

Is the experimental population area in suitable natural habitat outside the species' current range, but within its probable historical range?

The experimental population area is within suitable natural habitat in its probable historical range. Because Mexican wolves were extirpated from the wild prior to protection by the Act, there is no current range in the United States except that which is occupied by this nonessential experimental population. The MWEPA is considered to be probable historical range (Parsons 1996, p. 106; Bogan and Mehlhop 1983, p. 17).

Is the experimental population essential to the continued existence of the species?

Our finding of whether a population is nonessential is made with our understanding that Congress enacted the provisions of section 10(j) to mitigate fears that reestablishing populations of threatened or endangered species into the wild would negatively impact landowners and other private parties. Congress also recognized that flexible rules could encourage recovery partners to actively assist in the reestablishment and hosting of such populations on their lands (H.R. rep. No. 97–567, at 8 (1982)). Although Congress allowed experimental populations to be identified as either essential or nonessential, they noted that most experimental populations would be nonessential (H.R. Conference Report No. 835, supra at 34; Service 1984)).

We make all determinations on essentiality prior to taking any action to

reestablish a population of endangered or threatened species. It is instructive that Congress did not put requirements in section 10(j) to reevaluate the determination of essentiality after a species has been reestablished in the wild. While our regulations require a ''periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (50 CFR 17.81(c)(4))'', this has not been interpreted as requiring reevaluation and reconsideration of a population's nonessential experimental status (Service 1991, 1994, 1996b).

Reestablishing a species is by its very nature an experiment for which the outcomes are uncertain. However, it is always our goal to successfully reestablish a species in the wild so that it can be recovered and removed from the endangered species list. This is consistent with the Act's requirements for section 10(j) experimental populations. Specifically, the Act requires experimental populations to further the conservation of the species. Conservation is defined by the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. In short, experimental populations must further a species' recovery.

The importance of an experimental population to a species' recovery does not mean the population is ''essential'' under section 10(j) of the Act. All efforts to reestablish a species are undertaken to move that species toward recovery. If importance to recovery was equated with essentiality, no reestablished populations of a species would qualify for nonessential status. This interpretation would conflict with Congress' expectation that ''in most cases, experimental populations will not be essential'' (H.R. Conference Report No. 835, supra at 34; Service 1984) and our 1984 implementing regulations, which indicated an essential population will be a special case and not the general rule (Service 1984).

In addressing essentiality, the Act instructs us to determine whether a population is essential to the continued existence of an endangered or threatened species. Our regulations define essential experimental populations as those ''whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild (50 CFR 17.80(b)).'' The Service defines ''survival'' as the condition in which a species continues to exist in the future while retaining the potential for recovery (Service and National Marine Fisheries Service 1998). Inherent in our regulatory definition of essential is the impact the potential loss of the experimental population would have on the species as a whole (Service 1984). All experimental populations not meeting this bar are considered nonessential (50 CFR 17.80(b)).

The Service has previously determined that this experimental population of Mexican wolves was nonessential in the 1998 Final Rule. This proposal revalidates that conclusion. That is, even if the entire experimental population died, this situation would not appreciably reduce the prospects for future survival of the subspecies because Mexican wolves are still maintained in the captive-breeding program. Furthermore, the captive Mexican wolf population could produce enough wolves that future reintroductions in the wild would be feasible and we have a now proven capacity to successfully start a wild population from captive stock. All Mexican wolves selected for release are genetically redundant to the captive population, meaning their genes are already well represented. This factor minimizes any adverse effects on the genetic integrity of the remaining captive population in the event Mexican wolves released to the wild do not survive.

Does the establishment of the experimental population and release into the BRWRA and MWEPA further the conservation of the species?

(1) Are there any possible adverse effects on extant populations of the Mexican wolf as a result of removal of individuals for introduction elsewhere?

The only extant population of Mexican wolves other than those in the BRWRA is in the captive-breeding program. The primary purpose of Mexican wolves in the captive-breeding program is to supply wolves for reestablishing Mexican wolves into the wild. Individual Mexican wolves are selected from the captive-breeding program for release into the BRWRA. As explained in our 1998 Final Rule, the Mexican wolves selected for release are wolves that have genes that are well-represented in the captive population, thus minimizing any adverse effects on the genetic integrity of the remaining captive population. The Mexican Wolf SSP has detailed lineage information on each captive Mexican wolf and establishes annual breeding objectives to maintain the genetic diversity of the captive population (Siminski and Spevak 2012, p. 2). Our proposal to open the secondary recovery zone to initial releases will allow for more captive Mexican wolves to be released to the wild and can be accommodated by the captive-breeding program. We find that the continuation of the BRWRA population and specifically the expansion of the area into which initial releases can be conducted will not have adverse effects on the captive-breeding program. Mexican wolf dispersal from the BRWRA into the MWEPA will further the conservation of the species by allowing wolves access to additional habitat for reestablishment.

(2) What is the likelihood that any such experimental population will become established and survive in the foreseeable future?

In our 1998 Final Rule we stated, ''The Service finds that, under the Preferred Alternative, the reintroduced experimental population is likely to become established and survive in the wild within the Mexican wolf's probable historic range (63 FR 1754, January 12, 1998).'' We have been reestablishing Mexican wolves into the BRWRA since 1998, and the population has consistently demonstrated signs of establishment, such as wolves establishing home ranges and reproducing. The progress in meeting the population objective of at least 100 wild Mexican wolves has been slower than projected, but we anticipate that making the modifications proposed in this rule will support progress toward our objective. As of 2012, of the Mexican wolves in the wild in Arizona and New Mexico, 97 percent were conceived and born in the wild. Currently, there are fourth generation pups whose great grandparents were also born in the wild. We have also modified our management procedures related to depredation response and other recommendations from the Mexican Wolf Blue Range Reintroduction Project 5-Year Review to ensure the success of the BRWRA population (Service 2010, p. 29). To promote survival of the wild population we have utilized an adaptive management framework to modify our approach to depredation management by removing fewer Mexican wolves, focusing on proactive measures, and tasking an interdiction stakeholder council to develop a comprehensive depredation compensation, incentive, and proactive program.

(3) What are the relative effects that establishment of an experimental population will have on the recovery of the Mexican wolf?

Continuing the effort to reestablish the nonessential experimental population, and making modifications

to improve it, will substantially contribute to the recovery of the species, as it is currently extirpated in the wild except for the nonessential experimental population in the United States and a fledgling reestablishment effort in Mexico. We recognize that more than one population of Mexican wolves will need to be established for recovery (Service 2010, pp. 68–70); therefore, achieving the objective of at least 100 wolves for this population serves as a fundamentally necessary component of Mexican wolf recovery.

(4) What is the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area?

Now, as in the 1998 Final Rule (63 FR 1752, January 12, 1998), we do not foresee that the introduced population would be affected by existing or anticipated Federal or State actions or private activities. Wolves are considered habitat generalists that can occupy areas where prey populations and human tolerance support their existence (Mech 1970, p. 334; Mech 1995, entire; Fritts *et al.* 2003, pp. 300–301; Fuller *et al.* 2003, pp. 170–171; Oakleaf *et al.* 2006, p. 560). We expect Mexican wolves in the MWEPA to primarily occupy forested areas on public lands due to the availability of prey in these areas and supportive management regimes, although we recognize that wolves may disperse through or occasionally occupy less-suitable habitat. We also recognize that Mexican wolves may seek to inhabit tribal or private lands with suitable habitat.

The current BRWRA as established in the 1998 Final Rule is comprised of the Gila and Apache National Forests that are administered by the Forest Service. The Forest Service manages these areas to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The Gila and Apache National Forests within the BRWRA are responsible for developing and operating under a Land and Resource Management Plan, which outlines how each of the multiple uses on the forest will be managed. The Forest Service is a cooperator in the management and recovery of the Mexican wolf.

The proposed revision to the MWEPA contains a mixture of many land types, including Federal (Forest Service, Bureau of Land Management, Department of Defense), State, private, and tribal lands. A variety of actions and activities may occur throughout the MWEPA, such as recreation, agriculture and ranching, development, and military operations. Although we expect the majority of the Mexican wolf population to occur within the BRWRA or other public lands in the MWEPA due to habitat suitability, we also anticipate that the nonessential experimental population may be affected by actions and activities occurring on private or tribal land, such as ranching operations, because we haze or remove wolves that depredate livestock or display nuisance behavior. We are proposing to establish management actions in cooperation with private landowners and tribal governments to support the recovery of the Mexican wolf on private and tribal lands and will continue our efforts to establish and support the Mexican Wolf Livestock Interdiction Fund and proactive management activities aimed at reducing wolf-livestock conflicts.

Road and human densities have been identified as potential limiting factors for colonizing wolves in the Midwest and Northern Rocky Mountains due to the mortality associated with these landscape characteristics (Mladenoff *et al.* 1995, entire; Oakleaf *et al.* 2006, pp. 558–561). Vehicular collision, in particular, is not identified as having a significant impact on the Mexican wolf population, although it may contribute to the overall vulnerability of the population due to its small population size and the cumulative effects of multiple factors, including inbreeding and illegal shooting of wolves. We recognize that human and road densities in the BRWRA are within recommended levels for Mexican wolf colonization, and are expected to remain so in the future (see Proposed Rule Removing the Gray Wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife and Maintaining Protections for the Mexican Wolf (*Canis lupus baileyi*) by Listing it as Endangered), Factor E—Other Natural or Manmade Factors Affecting Its Continued Existence); therefore, we see the impact to the population from actions related to human development as minimal within the areas we expect Mexican wolves primarily to inhabit.

Both Arizona and New Mexico protect the Mexican wolf under State law. In Arizona, Mexican wolves are managed as Wildlife of Special Concern (Arizona Game and Fish Commission Rules, Article 4, R12–4–401) and are identified as a Species of Greatest Conservation Need (Tier 1a, endangered) (Species of Greatest Conservation Need 2006, pending). In New Mexico, Mexican wolves are listed as endangered under the State's Wildlife Conservation Act (NMSA 1978, pp. 17–2–37 through 17–2–46). Based on these protective designations and regulations, we do not foresee that actions on State land will significantly negatively affect the nonessential experimental population.

We will continue to work with other agencies, tribes, and landowners to ensure that their activities will not adversely affect the nonessential experimental population of Mexican wolves. In particular, we propose provisions within this rule to limit take of Mexican wolves (see proposed 50 CFR 17.84(k)(4)). Based on our intent to capture and return to the MWEPA Mexican wolves that disperse outside of the MWEPA, we do not expect actions and activities adjacent to the MWEPA to have a significant impact on the nonessential experimental population.

Summary of Proposed Changes From the Previous Nonessential Experimental Population Rule

The nonessential experimental population rule we are currently proposing differs from the 1998 Final Rule in several substantive and technical ways. Each of these modifications is being proposed to improve the efficacy and clarity of our nonessential experimental population designation and improve our progress toward reaching our objective to establish a population of at least 100 wild Mexican wolves. These modifications will also enhance our management flexibility of the population. Below is a list of the proposed changes from the previous nonessential experimental population rule:

(1) We are proposing to allow direct initial release of Mexican wolves from captivity to the wild throughout the entire BRWRA (i.e., both the primary and secondary recovery zones designated in the 1998 Final Rule) rather than only in the primary recovery zone (Figure 2). This modification will eliminate the need to define a primary and secondary recovery zone within the BRWRA, as management of Mexican wolves will be consistent throughout the BRWRA. Therefore, we are discontinuing the definitions of primary and secondary recovery zones in this proposal. This modification will promote population growth, genetic diversity, and management flexibility by providing additional area and locations for initial release of captive Mexican wolves to the wild.

(2) We are proposing to allow Mexican wolves to disperse naturally from the BRWRA into the MWEPA and to occupy the MWEPA (Figure 2). Please note that if Mexican wolves travel outside the MWEPA, we will capture

and return them to the MWEPA or put them in captivity. In the 1998 Final Rule, Mexican wolves were not allowed to disperse outside of the BRWRA; we were required to capture dispersing Mexican wolves and return them to the BRWRA or put them into captivity. Because natural dispersal from the BRWRA was not allowed, population growth in the wild has been limited. Therefore, we are proposing to allow for natural dispersal outside the BRWRA so that the wild population can expand numerically and spatially, assisting us in reaching our population objective. We will manage Mexican wolves in the MWEPA by reducing conflicts with humans and land uses through such means as hazing, trapping, translocations, and removals.

(3) We are proposing to remove the portion of Texas included in the 1998 Final Rule (west Texas lying north of U.S. Highway 62/180 to the Texas–New Mexico boundary) in our new designation of the MWEPA, as we do not consider this area to be likely to contribute substantially to our population objective (Figure 2).

(4) We are proposing to remove reference to possible reintroduction of Mexican wolves to the White Sands Wolf Recovery Area. The 1998 Final Rule included White Sands Wolf Recovery Area as a backup reintroduction location to be utilized if determined necessary, but prey density has since been determined to be too low in this area to support Mexican wolves (Figure 2).

(5) We are proposing to provide for the development and implementation of management actions on private land throughout the MWEPA. The 1998 Final Rule did not contain this provision because Mexican wolves were not allowed to inhabit the MWEPA outside of the BRWRA.

(6) We are proposing to provide for the development and implementation of management actions on tribal land within the MWEPA by the Service or an authorized agency in voluntary cooperation with tribal governments including but not limited to initial release, translocation, capture, and removal of Mexican wolves if requested by the tribal government.

(7) We are proposing to identify section 6 of the Act as authorizing State wildlife agencies to manage Mexican wolves pursuant to 50 CFR 17.31 under the nonessential experimental population rule. Section 6 of the Act authorizes the Service to cooperate to the maximum extent practicable with the States on the conservation of endangered species, including the development of cooperative agreements and management agreements. This proposed modification clarifies that States with which we have cooperative or management agreements for the Mexican wolf reintroduction project can take Mexican wolves that are part of the nonessential experimental population during the course of normal management activities in accordance with 50 CFR 17.31.

(8) We are proposing to clarify the specific circumstances under which individuals are authorized to take Mexican wolves that are part of the nonessential experimental population. In the 1998 Final Rule, we used the term ''personnel'' to describe those authorized to take Mexican wolves in the nonessential experimental population pursuant to a Service-approved management plan, special management measure, or a valid permit issued by the Service under 50 CFR 17.32. We intended this provision to extend to individuals, that is, not only those people who are associated with an agency.

(9) We are proposing to clarify the allowable take for Federal agencies and authorized personnel. We added language to the provisions for allowable take for Federal agencies to clarify that take must be non-negligent and incidental to a legal activity and must be reported within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service. We added language to the provisions for allowable take for authorized personnel to clarify that Wildlife Services personnel will not be in violation of the Act or this rule for take of a Mexican wolf that occurs while conducting official duties. Such take must be non-negligent, incidental to predator control activities, and consistent with recommendations of a section 7(a)(4) conference opinion with Wildlife Services that addresses their program activities that may affect Mexican wolves. Wildlife Services personnel must report the take within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service. We are proposing these modifications to provide clarity and consistency in our take determinations.

(10) We are proposing to revise the conditions that determine when we would issue a permit to allow take of Mexican wolves that are engaged in the act of killing, wounding or biting livestock. The 1998 Final Rule included a definition of breeding pair as one of the conditions for take of Mexican wolves by livestock owners or agents on public land grazing allotments (i.e., that there must be six breeding pairs present in order for a permit to take wolves to be issued by the Service). We consider overall population size to be a better metric for evaluating the appropriateness of providing such permits because it provides a more consistent measure of the population's status. Therefore, we are proposing to modify the provision ''6 breeding pairs'' to a requirement that at least 100 Mexican wolves must be present in the MWEPA before such a permit can be issued. With this proposed modification, the definition of a breeding pair would be made unnecessary.

(11) We are proposing to modify the prohibitions for take such that taking a Mexican wolf with a trap, snare, or other type of capture device within the occupied Mexican wolf range is prohibited and will not be considered unavoidable or unintentional take, unless due care was exercised to avoid injury or death to a Mexican wolf. Due care includes: (1) Following the regulations, proclamations, and/or laws within the State where the trapping takes place; (2) If securely fastening traps, using double-stake traps, cable stakes (at least 18 inches (in) (46 centimeters (cm)) deep), or otherwise attaching traps to immovable objects with aircraft cable or chain so that, if captured, a Mexican wolf is unable to pull the trap free; (3) If using drags, using one of sufficient size and weight or grapples made from steel at least 0.5 in (1.3 cm) in diameter of cross section attached to chains or cables; (4) Reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service; and (5) Not taking a Mexican wolf via neck snares. We are proposing this modification to provide clarity and consistency in our take determinations.

(12) We are proposing to establish a new requirement to conduct a one-time evaluation of the status of the nonessential experimental population and its contribution toward recovery of the Mexican wolf 5 years after the final rule designation. The 1998 Final Rule contained provisions for 3- and 5-year reviews, which were conducted in 2001 and 2005, respectively. We do not consider a 3-year review to be necessary, as we included this provision in the 1998 Final Rule to address the substantial uncertainties we had with reestablishing captive Mexican wolves to the wild. Therefore, a one-time evaluation 5 years after the final determination is made will provide the appropriate interval to assess the effectiveness of the project. We will also be conducting status reviews of the listed species every 5 years as required

by section 4(c)(2) of the Act, and will continue to produce annual progress reports.

(13) We are proposing to consider State-owned lands within the boundaries of the MWEPA in the same manner as we consider lands owned and managed by other public land management agencies. The 1998 Final Rule designated State-owned lands within the boundary of designated wolf recovery area as public land. All State-owned lands within the boundary of the MWEPA, but outside of designated wolf recovery areas were subject to the provisions of private lands in the 1998 Final Rule. We are proposing this change to allow consistent management of Mexican wolves throughout the MWEPA, recognizing that State and other public lands within the MWEPA are under control of the agency that owns those lands, that this regulation gives the Service no additional authority over those lands, and thus the Service's role is to work cooperatively with those land management agencies to address conservation needs of the Mexican wolf.

Additional Revisions to the Previous Nonessential Experimental Population Rule Under Consideration

In this proposed rule, we also identify and seek comment on several additional issues, none of which were included in the 1998 Final Rule. We are not proposing these modifications at this time, but are considering including them in our final determination:

(1) Moving the southern boundary of the MWEPA in Arizona and New Mexico from Interstate Highway 10 to the United States-Mexico international border (Figure 3);

(2) Expanding the BRWRA to include the entire Sitgreaves National Forest in Arizona (Figure 3);

(3) Expanding the BRWRA to include the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forests in Arizona (Figure 3);

(4) Expanding the BRWRA to include the Magdalena Ranger District of the Cibola National Forest in New Mexico (Figure 3);

(5) Including provisions for take by pet owners of any Mexican wolf engaged in the act of killing, wounding, or biting pets on private or tribal land anywhere within the MWEPA, provided that evidence of a freshly wounded or killed pet by wolves is present. Such take must be reported to the Service's Mexican Wolf Recovery Coordinator or an authorized agent within 24 hours; and

(6) Changing the term ''depredation'' to ''depredation incident'' and revising the definition to mean, ''The aggregate number of livestock killed or mortally wounded by an individual Mexican wolf or single pack of Mexican wolves at a single location within one 24-hour period, beginning with the first confirmed kill or injury.''

(7) Including provisions for the issuance of permits on private or tribal lands anywhere within the MWEPA to allow livestock owners or their agents to take (including kill or injure) any Mexican wolf that is present on private or tribal land, including establishing conditions that must be met before such a permit is issued, such as a minimum population size of Mexican wolves present in the MWEPA or other established populations based on the most recently reported population count; other relevant measures of population status such as genetic diversity; documentation by the Service or our authorized agent of previous loss or injury of livestock on the private or tribal land, caused by Mexican wolves; completion of agency efforts to resolve the problem; and enactment of this provision by a formal statement from the Service.

Our intent in considering expansion of the BRWRA would be to release or translocate wolves only into areas of suitable habitat, likely in areas above 4,000 ft above sea level.

Peer Review

In accordance with joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. We have provided copies of this proposed rule to three or more appropriate and independent specialists in order to solicit comments on the scientific data and assumptions we utilized. The purpose of such review is to ensure that the final determination is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during the public comment period and will consider their comments and information on the proposed modifications during preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Requests for public hearings must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. If we schedule public hearings on this proposal, we will announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before any such hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include

small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed rule, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

In the 1998 Final Rule, we found that the nonessential population would not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The 1998 Final Rule set forth management directions and provided for limited allowable legal take of Mexican wolves within the MWEPA. We concluded that the rule would not significantly change costs to industry or governments. Furthermore, the rule produced no adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. We further concluded that no significant direct costs, information collection, or recordkeeping requirements were imposed on small entities by the action and that the rule was not a major rule as defined by 5 U.S.C. 804(2) (63 FR 1752, January 12, 1998).

If this proposal is adopted, the area affected by this rule includes the portion of the States of Arizona and New Mexico from Interstate Highway 40 south to Interstate Highway 10. This rule proposes an activity that has, in part, already been taking place within the BRWRA. However, we are now proposing to allow initial releases into a portion of the BRWRA in which initial releases were not previously allowed and to allow Mexican wolves to disperse from the BRWRA into the entire MWEPA.

This proposal to allow initial releases in the entire BRWRA will not affect small businesses, organizations, or governments, as this action will occur on the Gila National Forest and the Apache National Forest (Federal land). Although conducting initial releases on the Gila National Forest would be a new action (not currently allowed based on the 1998 Final Rule), if this proposed revision is finalized, Mexican wolves already inhabit the Gila National Forest.

In addition, section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species. However, because a nonessential experimental population is, by definition, not essential to the survival of the species, conferencing will likely never be required within the MWEPA. Furthermore, the results of a conference are strictly advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the nonessential experimental population area. As a result, and in accordance with these regulations, some modifications to the proposed Federal actions within the nonessential experimental population area may occur to benefit the Mexican wolf, but we do not expect projects on Federal lands to be halted or substantially modified as a result of these regulations.

On the other hand, this proposed revision would allow Mexican wolves to disperse outside the BRWRA into the MWEPA, which has the potential to affect small entities in the area outside the BRWRA. Specifically, small businesses involved in animal production on private or tribal land, such as beef cattle and sheep ranching, may be affected by Mexican wolves depredating on livestock. Efforts to reduce depredation on livestock are additional expenses to ranching operations, such as employing range riders or modifying fencing or livestock grazing rotation schedules. However, these types of proactive activities may already be conducted for other predators like black bears (*Ursus americanus*), coyotes (*Canis latrans*), or mountain lions (*Puma concolor*). We will further assess these types of impacts to small entities in the area outside the BRWRA in the draft EIS.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the EIS. Upon completion of a draft EIS, we will announce availability of the draft EIS in the **Federal Register** and reopen the public comment period for the proposed revision. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for the determination. We have concluded that deferring the RFA finding until completion of the EIS is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) Because we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding, we defer our finding on whether this rule will ''significantly or uniquely'' affect small governments until completion of the EIS. At that time, we will determine and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* whether or not this rulemaking will impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, we do not expect that small governments will be affected because the nonessential experimental population designation will not place additional requirements on any city, county, or other local municipalities. However, we will analyze this further in the final rule.

(2) We do not expect that this rule will produce a Federal mandate of $100 million or greater in any year (i.e., it is not a ''significant regulatory action''

under the Unfunded Mandates Reform Act). Also, we do not expect that this nonessential experimental population designation for Mexican wolves will impose any additional management or protection requirements on the States or other entities. However, we will analyze this further in the final rule.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), this rule does not have significant takings implications. When reestablished populations of federally listed species are designated as nonessential experimental populations, the Act's regulatory requirements regarding the reestablished listed species within the nonessential experimental population are significantly reduced. In the 1998 Final Rule, we stated that one issue of concern is the depredation of livestock by reintroduced Mexican wolves, but such depredation by a wild animal would not be a taking under the 5th Amendment. One of the reasons for the experimental nonessential designation is to allow the agency and private entities flexibility in managing Mexican wolves, including the elimination of a wolf when there is a confirmed kill of livestock.

A takings implication assessment is not required because this rule will not effectively compel a property owner to suffer a physical invasion of property and will not deny all economically beneficial or productive use of the land or aquatic resources. This rule substantially advances a legitimate government interest (conservation and recovery of a listed species) and does not present a barrier to all reasonable and expected beneficial use of private property.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this rule with the affected resource agencies in New Mexico and Arizona. Achieving the recovery goals for this species will contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially or directly affected. The special rule operates to maintain the existing relationship between the State and the Federal Government. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment under the provisions of Executive Order 13132.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and will meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we intend to notify the Native American tribes within and adjacent to the nonessential experimental population area about the proposed rule. They will be advised through written contact, including informational mailings from the Service, and will be provided an opportunity to comment on the draft EIS and proposed rule. If future activities resulting from this rule may affect tribal resources, the Service will communicate and consult on a Government-to-Government basis with any affected Native American tribes in order to find a mutually agreeable solution.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule would not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. The OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned control number 1018–0095, which expires May 31, 2014. 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 Office of Management and Budget control number.

National Environmental Policy Act

We are preparing a draft EIS pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with the proposed revision to the nonessential experimental population of the Mexican wolf section 10(j) rule. As part of this process, we will analyze a range of alternatives for implementation of a nonessential experimental population pursuant to NEPA.

From October through December 2007, we conducted a public scoping process under NEPA based on our intent to modify the 1998 Final Rule. We developed a final scoping report in April 2008, but we did not propose or finalize any modifications to the 1998 Final Rule at that time. We will utilize the information collected during that scoping process in the development of a draft EIS for this proposed revision to the nonessential experimental population of the Mexican wolf. Information about additional scoping opportunities is available on our Web site, *at http://www.fws.gov/southwest/es/mexicanwolf/NEPA.cfm.* When the draft EIS is complete, we will announce its availability for public review, and we will reopen the public comment period on this proposed rule for additional review and comment. After full consideration of all information and comments received on this proposed rule and the draft EIS, our final determination will be made based on the best available information and may include any of the modifications discussed in this proposed rule.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0056, or upon request from the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) in the List of Endangered and Threatened Wildlife under Mammals by:

■ a. Removing both entries for ''Wolf, gray *(Canis lupus)''*; and

■ b. Adding two entries for ''Wolf, Mexican *(Canis lupus baileyi)''* in alphabetic order 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, Mexican	*Canis lupus baileyi*	Southwestern United States and Mexico.	Entire, except where included in an experimental population as set forth in 17.84(k).	E	.....	NA	NA
Wolf, Mexican	*Canis lupus baileyi*	Southwestern United States and Mexico.	U.S.A. (portions of AZ and NM)—see 17.84(k).	XN	.....	NA	17.84(k)
*	*	*	*	*	*		*

■ 3. Amend § 17.84 by revising paragraph (k) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(k) Mexican wolf (*Canis lupus baileyi*). This paragraph (k) sets forth the provisions of a rule to establish an experimental population of Mexican wolves.

(1) *Purpose of the rule:* The Service finds that reestablishment of an experimental population of Mexican wolves into the subspecies' probable historical range will further the conservation of the Mexican wolf subspecies. The Service also finds that the experimental population is not essential under § 17.81(c)(2).

(2) *Determinations:* The Mexican wolf population reestablished in the Mexican Wolf Experimental Population Area, including the Blue Range Wolf Recovery Area, identified in paragraph (k)(4) of this section, is one nonessential experimental population. This nonessential experimental population will be managed according to the provisions of this rule. The Service does not intend to change the nonessential experimental designation to essential experimental, threatened, or endangered. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii).

(3) *Definitions*—Key terms used in this rule have the following definitions:

Affect game populations in ways that may inhibit further Mexican wolf recovery means affect a particular species of ungulate in a game management unit or distinct herd segment by cumulatively decreasing population or hunter harvest estimates by 35 percent during 2 consecutive years compared to the herd's 5-year average prior to Mexican wolf occupancy (the unit or herd must contain an average of greater than 100 animals). This definition does not apply to Service-approved State and tribal Mexican wolf management plans that define unacceptable impacts from wolf predation on game populations.

Blue Range Wolf Recovery Area means the entirety of the Gila National Forest in New Mexico and the Apache National Forest in Arizona in which Mexican wolves may be initially released from captivity, translocated, and managed to reduce conflicts with humans and other land uses to achieve recovery.

Depredation means the confirmed killing or wounding of lawfully present domestic livestock by one or more wolves. The Service, Wildlife Services, or other Service-authorized agencies will confirm cases of wolf depredation on domestic livestock.

Disturbance-causing land-use activity means any land-use activity that the Service determines could adversely

affect reproductive success, natural behavior, or survival of Mexican wolves. Such activities may include, but are not limited to—timber or wood harvesting, prescribed fire, mining or mine development, camping outside designated campgrounds, livestock drives, off-road vehicle use, hunting, and any other use or activity with the potential to disturb wolves. The following activities are specifically excluded from this definition:

(i) Legally permitted livestock grazing and use of water sources by livestock;

(ii) Livestock drives if no reasonable alternative route or timing exists;

(iii) Vehicle access over established roads to private property and to areas on public land where legally permitted activities are ongoing if no reasonable alternative route exists;

(iv) Use of lands within the national park or national wildlife refuge systems as safety buffer zones for military activities;

(v) Fire-fighting activities associated with wildfires; and

(vi) Any authorized, specific land use that was active and ongoing at the time Mexican wolves chose to locate a den or rendezvous site nearby.

Engaged in the act of killing, wounding, or biting livestock means in the pursuit of and grasping, biting, attacking, or wounding, or feeding upon, livestock that are alive. The term does not include Mexican wolves feeding on a livestock carcass.

Harass means intentional or negligent actions or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering.

Livestock means cattle, sheep, horses, mules, burros, llamas, and alpacas, or other domestic animals defined as livestock in Service-approved State and tribal Mexican wolf management plans.

Mexican Wolf Experimental Population Area (MWEPA) means an area in Arizona and New Mexico that lies south of Interstate Highway 40 to Interstate Highway 10 into which Mexican wolves are allowed to disperse from the Blue Range Wolf Recovery Area and establish, but are managed by reducing conflicts with humans and land uses through such means as hazing, trapping, translocations, and removals.

Occupied Mexican wolf range means an area of confirmed presence, based on the most recent annual report, of resident breeding packs or pairs of Mexican wolves or an area consistently used by at least one resident Mexican wolf over a period of at least 1 month in the MWEPA, described as:

(i) A radius of 5 mi (8 km) around all locations of Mexican wolves and wolf sign confirmed as described above (non-radio-monitored);

(ii) A radius of 5 mi (8 km) around radio locations of resident Mexican wolves when fewer than 20 radio locations are available (for radio-monitored wolves only); or

(iii) A radius of 3 mi (4.8 km) around a scientifically developed home range (fixed kernel or other appropriate method) from more than 20 radio locations of a pack, pair, or single Mexican wolf acquired over a period of at least 6 months (for radio-monitored wolves).

Opportunistic, noninjurious harassment means scaring a Mexican wolf observed on private land or near livestock from the immediate area by taking actions such as discharging firearms or other projectile-launching devices in proximity to but not in the direction of the wolf, throwing objects at it, or making loud noise in proximity to it, without causing bodily injury or death to the wolf.

Problem wolves means Mexican wolves that—

(i) Are members of a group or pack (including adults and yearlings) that were directly involved in livestock depredation on lawfully present domestic livestock on Federal land;

(ii) Have depredated domestic animals other than livestock on private or tribal lands, two times in an area within 1 year; or

(iii) Are habituated to humans, human residences, or other facilities.

Public land means land owned, managed, or under the administration of a State or aFederal agency, including, but not limited to, the Service, National Park Service, Bureau of Land Management, U.S. Forest Service, Department of Energy, or Department of Defense

Rendezvous site means a gathering and activity area regularly used by a litter of young Mexican wolf pups after they have emerged from the den. Typically, the site is used from about 1 week to 1 month during the period from June 1 to September 30. Several sites may be used in succession.

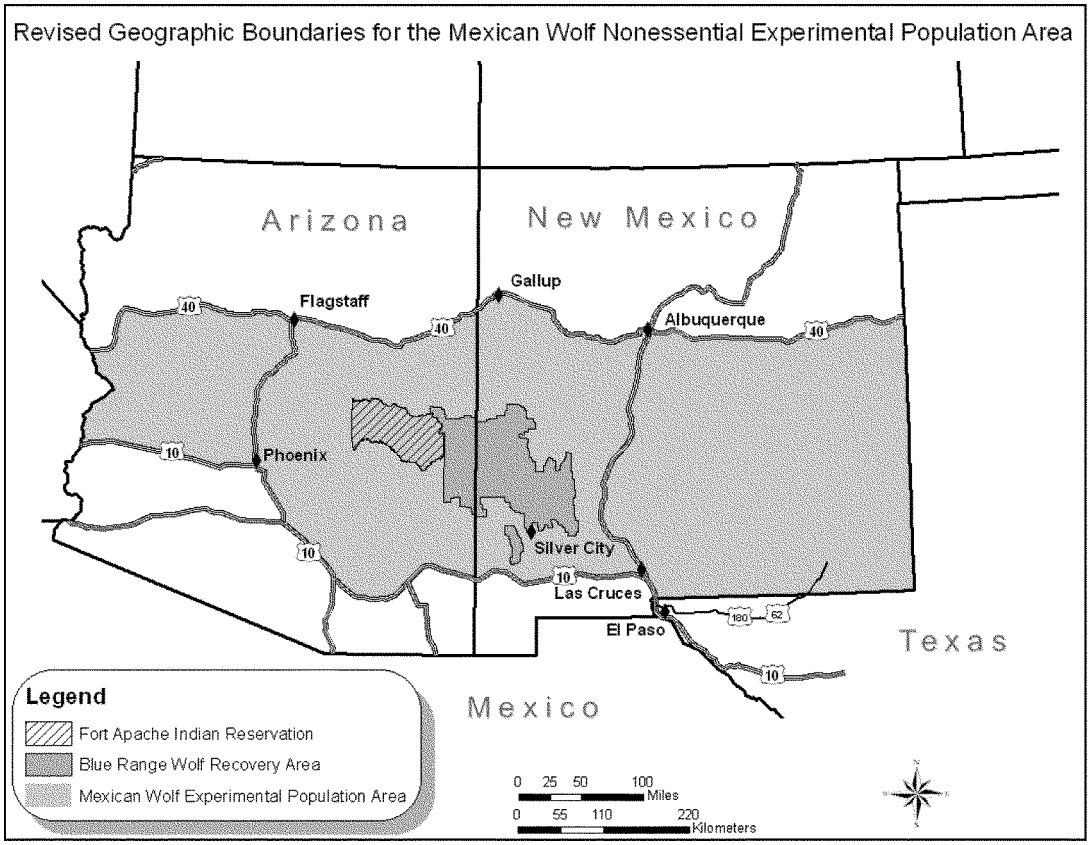
Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)).

Unavoidable and unintentional take means take that occurs despite the use of due care, is incidental to an otherwise lawful activity, and is not done on purpose. Taking a Mexican wolf by shooting will not be considered unavoidable and unintentional take.

(4) *Designated area:* The designated experimental population area for Mexican wolves classified as a nonessential experimental population by this rule is described in this paragraph (k)(4). The designated experimental population area is within the subspecies' probable historical range and is wholly separate geographically from the current range of any known Mexican wolves or other gray wolves.

(i) The Blue Range Wolf Recovery Area includes all of the Apache National Forest and all of the Gila National Forest in east-central Arizona and west-central New Mexico. Mexican wolves may be initially released from captivity into the Blue Range Wolf Recovery Area, translocated, and managed to reduce conflicts with humans and other land uses. Mexican wolves will be allowed to disperse from this area into the MWEPA and to occupy the MWEPA.

(ii) A map of the MWEPA follows:



(5) *Prohibitions:* Take of any Mexican wolf in the wild within the MWEPA is prohibited, except as provided in paragraph (k)(6) of this section. In addition, the following actions are prohibited by this rule:

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any Mexican wolf or wolf part from the experimental population except as authorized in this rule or by a valid permit issued by the Service under § 17.32. If a person kills or injures a Mexican wolf or finds a dead or injured wolf or wolf parts, the person must not disturb them (unless instructed to do so by an authorized agent of the Service), must minimize disturbance of the area around them, and must report the incident to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(ii) No person may attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this rule.

(iii) Taking a wolf with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited (except as authorized in paragraph (k)(6)(iv) of this section) and will not be considered unavoidable and unintentional take, unless due care was exercised to avoid injury or death to a wolf. Due care includes:

(A) Following the regulations, proclamations, and/or laws within the State where the trapping takes place;

(B) If securely fastening traps, using double-stake traps, cable stakes (at least 18 inches (in) (46 centimeters (cm)) deep), or otherwise attaching traps to immovable objects with aircraft cable or chain so that, if captured, a Mexican wolf is unable to pull the trap free;

(C) If using drags, using one of sufficient size and weight or grapples made from steel at least 0.5 in (1.3 cm) in diameter of cross section attached to chains or cables;

(D) Reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service; and

(E) Not taking a Mexican wolf via neck snares.

(6) *Allowable take:* Take of Mexican wolves in the MWEPA is allowed as follows:

(i) *Any person or other entity:* (A) Throughout the MWEPA, unavoidable and unintentional take of a Mexican wolf is not a violation of the Act or this rule. Such take must be reported within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service.

(B) Throughout the MWEPA, any person may use opportunistic, noninjurious harassment at any time for Mexican wolves that are within 500 yards of people, buildings, facilities, pets, livestock, or other domestic animals, and no permit is required—provided that wolves are not purposefully attracted, tracked, searched out, or chased and then harassed. Such harassment of Mexican wolves must be reported within 7 days to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service.

(C) A person may take (which includes killing as well as nonlethal actions such as harassing, harming, and wounding) a Mexican wolf in self-defense or defense of the lives of others, provided that the take is reported within 24 hours to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service. If the Service or an authorized agency determines that a Mexican wolf presents a threat to human life or safety, the Service or the authorized agency may kill the wolf or place it in captivity.

(ii) *Federal agencies:* (A) Throughout the MWEPA, excluding areas within the National Park System and National Wildlife Refuge System, no Federal agency or their contractors will be in violation of the Act or this rule for

unavoidable and unintentional take of a Mexican wolf resulting from any action authorized by that Federal agency or by the Service, including, but not limited to, military training and testing. Such take must be nonnegligent and incidental to a legal activity and must be reported within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service. This provision does not exempt agencies and their contractors from complying with sections 7(a)(1) and 7(a)(4) of the Act, the latter of which requires a conference with the Service if they propose an action that is likely to jeopardize the continued existence of the Mexican wolf.

(B) In areas within the National Park System and National Wildlife Refuge System, Federal agencies must treat Mexican wolves as a threatened species for purposes of complying with section 7 of the Act.

(iii) *Livestock owners or their agents:* (A) On private land anywhere within the MWEPA, livestock owners or their agents may take (including kill or injure) any Mexican wolf actually engaged in the act of killing, wounding, or biting livestock—provided that evidence of livestock freshly wounded or killed by Mexican wolves is present. The take must be reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(B) On tribal lands anywhere within the MWEPA, livestock owners or their agents may take (including kill or injure) any Mexican wolf actually engaged in the act of killing, wounding, or biting livestock—provided that evidence of livestock freshly wounded or killed by wolves is present. The take must be reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(C) On public lands allotted for livestock grazing anywhere within the MWEPA, including the Blue Range Wolf Recovery Area, livestock owners or their agents may be issued a permit under the Act to take Mexican wolves actually engaged in the act of killing, wounding, or biting livestock. Before such a permit is issued, the following conditions must be met: Livestock must be legally present on the grazing allotment; at least 100 Mexican wolves must be present in the MWEPA based on the most recently reported population count; previous loss or injury of livestock on the grazing allotment, caused by Mexican wolves, must be documented by the Service or our authorized agent; and agency efforts to resolve the problem must be completed. Permits issued under this provision will be valid for 45 days or less and will specify the maximum number of Mexican wolves for which take is allowed. If a livestock owner or his or her agent takes a Mexican wolf under this provision, evidence of livestock freshly wounded or killed by Mexican wolves must be present. Livestock owners or their agents must report this take to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(D) Throughout the MWEPA, take of Mexican wolves by livestock guarding dogs, when used in the traditional manner to protect livestock on public, tribal, and private lands, is permitted. If such take by a guard dog occurs, it must be reported to the Service's Mexican Wolf Recovery Coordinator or a designated representative of the Service within 24 hours.

(iv) *Authorized personnel:* Individuals or personnel authorized by the Service may take any Mexican wolf in the nonessential experimental population in a manner consistent with a Service-approved management plan, special management measure, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act as authorized pursuant to § 17.31 for State wildlife agencies with authority to manage Mexican wolves, or a valid permit issued by the Service under § 17.32.

(A) This take may include, but is not limited to, capture and translocation of Mexican wolves that: Prey on livestock; attack pets or domestic animals other than livestock on private or tribal land; affect game populations in ways that may inhibit further Mexican wolf recovery; are considered problem wolves; endanger themselves by their presence in a military impact area; need aid or veterinary care; or must be taken for authorized scientific, research, or management purposes. If Mexican wolf predation is shown to be a primary cause of ungulate population declines (greater than 50 percent of documented adult or young mortality), then wolves may be moved to reduce ungulate mortality rates and assist in herd recovery, but only in conjunction with application of other common, professionally acceptable, wildlife management techniques.

(B) The Service encourages those authorized to take wolves to use nonlethal means when practicable and appropriate prior to any lethal take of a Mexican wolf. Lethal methods of take may be used when reasonable attempts to capture wolves alive have failed and when the Service determines that immediate removal of a particular Mexican wolf or wolves from the wild is necessary.

(C) Authorized personnel may use leghold traps and any other effective device or method for capturing or controlling Mexican wolves to carry out any measure that is a part of a Service-approved management plan, notwithstanding any conflicts with State law. Trappers can call the Interagency Field Team (IFT) (1–888–459–WOLF [9653]) as soon as possible to arrange for radio-collaring and releasing of the wolf. Per State regulations for releasing nontarget animals, trappers may also choose to release the animal alive and subsequently contact the Service or IFT. The disposition of all Mexican wolves (live or dead) or their parts taken as part of a Service-authorized management activity must follow provisions in Service-approved management plans or interagency agreements or procedures approved by the Service on a case-by-case basis.

(D) As determined by the Service to be appropriate, the Service or any agent authorized by the Service may capture, kill, subject to genetic testing, place in captivity, or euthanize any feral wolflike animal, feral wolf hybrid, or feral dog found within the MWEPA that shows physical or behavioral evidence of: Hybridization with other canids, such as domestic dogs or coyotes; being an animal raised in captivity, other than as part of a Service-approved wolf recovery program; or being socialized or habituated to humans. If determined to be a pure Mexican wolf, the wolf may be returned to the wild.

(E) The Wildlife Services division will discontinue use of M–44's and choking-type snares in occupied Mexican wolf range. Wildlife Services may restrict or modify other predator control activities pursuant to a cooperative management agreement or a conference opinion between that division and the Service. Wildlife Services personnel will not be in violation of the Act or this rule for take of a Mexican wolf that occurs while conducting official duties. Such take must be nonnegligent, incidental to predator control activities, and consistent with a section 7(a)(4) conference opinion addressing Wildlife Services program activities that may affect Mexican wolves. Wildlife Services personnel must report the take within 24 hours to the Service's Mexican Wolf Recovery Coordinator or to a designated representative of the Service.

(7) *Land-use restrictions:* (i) No land-use restrictions will be imposed on private lands pursuant to this rule or for

Mexican wolf recovery without the concurrence of the landowner.

(ii) No land-use restrictions will be imposed on tribal lands pursuant to this rule or for Mexican wolf recovery without the concurrence of the tribal government.

(iii) On public lands, the Service will work with cooperating public land management agencies to use their authorities to temporarily restrict human access and disturbance-causing land-use activities within a 1-mi (1.6-km) radius around release pens when Mexican wolves are in them, around active dens between March 1 and June 30, and around active Mexican wolf rendezvous sites between June 1 and September 30, as necessary.

(8) *Management:* (i) On private land within the MWEPA, the Service or an authorized agency will develop and implement management actions to benefit Mexican wolf recovery in cooperation with willing private landowners, including initial release and translocation of wolves on private land if requested by the landowner.

(ii) On tribal land within the MWEPA, the Service or an authorized agency will develop and implement management actions in cooperation with willing tribal governments, including initial release, translocation, capture, and removal of Mexican wolves on tribal land if requested by the tribal government.

(9) *Evaluation:* The Service will evaluate Mexican wolf reestablishment progress and prepare periodic progress reports and detailed annual reports. In addition, the Service will prepare a one-time overall evaluation of the nonessential experimental population program 5 years after [EFFECTIVE DATE OF THE FINAL RULE] that focuses on modifications needed to improve the efficacy of this rule, reestablishment of Mexican wolves to the wild, and the contribution the nonessential population is making to the recovery of the Mexican wolf.

* * * * *

Dated: May 29, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–13977 Filed 6–12–13; 8:45 am]

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Thursday, June 13, 2013

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