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U.S. GOVERNMENT
INFORMATION
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Federal Register

6–23–08 Monday
Vol. 73 No. 121 June 23, 2008

Pages 35337–35578

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AD28

Financial Education Programs That Include the Provision of Bank Products and Services

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim final rule and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulations to permit state nonmember banks to participate or assist in financial education programs conducted on school premises where, in connection with the program, deposits are received, checks are paid, or money is lent, without the need to submit a branch application to, and receive prior approval from, the FDIC. However, any state nonmember bank that desires to engage in such financial education programs must satisfy certain conditions.

DATES: *Effective date:* June 23, 2008.

Comment date: Comments on this interim final rule must be received by July 23, 2008.

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

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/propose.html*.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- *E-mail: comments@FDIC.gov*.
- *Public Inspection:* Comments may be inspected and photocopied in the FDIC Public Information Center, Room E–1002, 3502 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AD28''. Comments received will be posted generally without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Donald R. Hamm, Section Chief, Risk Management and Applications Section, (202) 898–3528, Division of Supervision and Consumer Protection; or Mark L. Handzlik, Senior Attorney, (202) 898–3990, or Robert C. Fick, Counsel, (202) 898–8962, Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

1. Background

The FDIC recognizes the importance of financial education programs, particularly for those individuals who have little or no experience using bank-provided services. Such programs generally contribute to the financial stability of individuals, families, and communities. Accordingly, the FDIC supports the ongoing efforts of state nonmember banks to enhance financial literacy, and continues to encourage institutions to collaborate with others members of the community to deliver financial education.

Recently, the FDIC received a number of inquiries as to whether the definition of branch includes a school or school facility where a state nonmember bank participates or assists in a financial education program for the benefit of students. Generally, through such programs, students are trained in various banking functions and personal financial management. A bank employee may serve as an advisor to the students and assist faculty in developing a financial education curriculum.

In some instances, students provide limited banking services to students and faculty directly at the school, on either a part-time basis or designated school days. A bank engaged in such a program could train students in bank operations and provide general supervision over the program and the provision of banking services. These services could include opening deposit accounts at the bank for students, faculty and parents, and receiving deposits for credit to such accounts. The participating bank may also pick up and deliver to its main office or a branch any funds received by the students in connection with the program. Note that this is not intended to provide an exclusive list of permissible activities for banks involved in financial education programs.

Section 18(d)(1) of the Federal Deposit Insurance Act (FDI Act) (Section 18(d)(1)) provides that no state nonmember bank shall establish or operate a new domestic branch without the prior written consent of the FDIC.[1] Section 3(o) of the FDI Act (Section 3(o)) generally defines a domestic branch to include any branch bank, branch office, branch agency, additional office or any branch place of business where deposits are received or checks paid or money lent (each a core-banking function).[2] The FDIC has determined by regulation that a messenger service that is established and operated by a state nonmember bank or its affiliate, which performs one of the core-banking functions, is a branch and requires a prior approval pursuant to these statutory provisions.[3]

Under certain conditions, a bank's participation in a financial education program conducted on school premises differs from a bank messenger service in that any core-banking function provided in connection with such program is (i) provided at the discretion of the school; (ii) made available on a limited basis to a discrete group of individuals and not to the general public; and (iii)

[1] *See* 12 U.S.C. 1828(d)(1).

[2] *See* 12 U.S.C. 1813(o).

[3] *See* 12 CFR 303.41. If, however, the messenger service is established or operated by a non-affiliated third party, it generally does not constitute a branch for purposes of Section 18(d) and FDIC regulations. This interpretation is consistent with a plain reading of Section 18(d)(1), and with the decision in *Cades* v. *H & R Block*, where Justice Butzner, writing for the Fourth Circuit, explained that ''courts apply a two-part test to decide whether a bank is operating a branch office. First, the court determines whether [the] branch is established and operated by the bank. * * *'' *See* 43 F.3d 869, 814 (4th Cir. 1994), *citing Independent Bankers Ass'n of New York* v. *Marine Midland Bank*, 757 F.2d 453, 456–63 (2d Cir 1985); *Independent Bankers Ass'n of America* v. *Smith*, 534 F.2d, 921, 951–52 (DC Cir. 1976). *See also First National Bank in Plant City* v. *Dickinson*, 396 U.S. 122, 137 n. 10 (1970).

conducted and designed primarily for educational purposes. Moreover, participating in a financial education program differs from establishing a branch because, generally, with respect to such program, the facility where banking services are provided is established by the school.

2. Interim Final Rule

This interim final rule exempts from the definition of branch any financial education program operated on school premises or a facility used by a school, where, in connection with the program, deposits are received, checks are paid, or money is lent, subject to certain conditions.[4] As provided in this rule, the principal purpose of the financial education program must be educational, and not designed for the purpose of profit-making. Further, any banking services provided in connection with the program must be provided at the discretion of the school. The FDIC expects that such services would be limited in nature; available only to students, parents, and faculty; and accessible on a part-time basis or designated school days. The bank must monitor the program to ensure that it is conducted in a safe and sound manner and complies with applicable law.

Request for Comments

The FDIC requests comments on all aspects of this interim final rule. Specifically, the FDIC requests comment on whether specific controls are needed to ensure the safety and soundness of financial education programs conducted on school premises and covered by this regulation, for example, rules regarding data and physical security. The FDIC also requests comment on whether the scope of, or a bank's involvement in, any financial education programs extends beyond the activities described in this rule.

Regulatory Analysis and Procedure

A. Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act (APA) requires the FDIC to publish a substantive rule at least 30 days before its effective date, unless, under subsection (d)(1), the rule establishes or recognizes an exemption or relieves a restriction.[5] This interim final rule establishes an exemption to the definition of branch provided in 12 CFR part 303, subpart C, which has the effect of permitting state nonmember banks to participate in certain financial education programs conducted on school premises without having to submit a branch application to, and receive prior approval from, the FDIC. Therefore, the FDIC is not required to publish this interim final rule in the **Federal Register** at least 30 days before its effective date.

B. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.[6] We invite your comments on how to make this rule easier to understand. For example:

Is the material provided in this rule well organized? If not, how could this material be better organized?

Are the requirements in the interim final rule clearly stated? If not, how could the rule be more clearly stated?

Does the rule contain language or jargon that is not clear? If so, which language requires clarification?

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[7] Because this rulemaking does not involve the issuance of a notice of proposed rulemaking, the requirements of the RFA for a final regulatory flexibility analysis do not apply.[8]

D. Paperwork Reduction Act

The FDIC has determined that this interim final rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995.[9]

List of Subjects

12 CFR Part 303

Banks, banking, State nonmember banks.

Authority and Issuance

■ For the reasons set forth in the preamble, part 303 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1817, 1818, 1823, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 15 U.S.C. 1601–1607.2.

■ 2. In § 303.41, the introductory text of paragraph (a) is revised to read as follows:

§ 303.41 Definitions.

* * * * *

(a) *Branch,* except as provided in § 303.46, includes any branch bank, branch office, additional office, or any branch place of business located in any State of the United States or in any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands at which deposits are received or checks paid or money lent. A branch does not include an automated teller machine, an automated loan machine, or a remote service unit. The term branch also includes the following:

* * * * *

■ 3. A new § 303.46 is added to subpart C to read as follows:

§ 303.46 Financial education programs that include the provision of bank products and services.

No branch application or prior approval is required in order for a state nonmember bank to participate in one or more financial education programs that involve receiving deposits, paying withdrawals, or lending money if:

(a) Such service or services are provided on school premises, or a facility used by the school;

(b) Such service or services are provided at the discretion of the school;

(c) The principal purpose of each program is financial education. For example, the principal purpose of a program would be considered to be financial education if the program is designed to teach students the principles of personal financial management, banking operations, or the benefits of saving for the future, and is not designed for the purpose of profit-making; and

(d) Each program is conducted in a manner that is consistent with safe and sound banking practices and complies with applicable law.

Dated at Washington, DC, the 17th day of June, 2008.

By order of the Board of Directors

[4] This exemption is consistent with a regulation promulgated by the Office of the Comptroller of the Currency in 2001 which exempts from the definition of branch a national bank's participation in a financial literacy program conducted on school premises. 12 CFR 7.1021.

[5] *See* 5 U.S.C. 553(d).

[6] *See* Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999).

[7] *See* 5 U.S.C. 603(a).

[8] *See* 5 U.S.C. 604.

[9] 44 U.S.C. 3501 *et seq.*

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–14076 Filed 6–20–08; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 122

[CBP Dec. 08–23]

List of User Fee Airports: Additions of Capital City Airport, Lansing, MI and Kelly Field Annex, San Antonio, TX

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; technical amendments.

SUMMARY: This document amends the Customs and Border Protection (CBP) Regulations by revising the list of user fee airports to reflect the recent user fee airport designations for Capital City Airport in Lansing, Michigan, and Kelly Field Annex in San Antonio, Texas. User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers for the processing of aircraft entering the United States, and the passengers and cargo of those aircraft.

DATES: *Effective Date:* June 23, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Captain, Office of Field Operations, 703–261–8516.

SUPPLEMENTARY INFORMATION:

Background

Title 19, Code of Federal Regulations (CFR), sets forth at Part 122 regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce.

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport, and, if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Public Law 98–573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international airport or a landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of Homeland Security [1] as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP as delegated by the Secretary of Homeland Security determines that the volume of business at the airport is insufficient to justify customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Commissioner of CBP in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Commissioner of CBP to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

The Commissioner of CBP designates airports as user fee airports pursuant to 19 U.S.C. 58b. *See* 19 CFR 122.15. If the Commissioner decides that the conditions for designation as a user fee airport are satisfied, a Memorandum of Agreement (MOA) is executed between the Commissioner of CBP and the local responsible official signing on behalf of the state, city or municipality in which the airport is located. In this manner, user fee airports are designated on a case-by-case basis. Section 19 CFR 122.15 sets forth the grounds for withdrawal of a user fee designation and sets forth the list of designated user fee airports. Periodically, CBP updates the list of user fee airports at 19 CFR 122.15(b) to reflect those that have been currently designated by the Commissioner. This document updates that list of user fee airports by adding Capital City Airport, in Lansing, Michigan, and Kelly Field Annex, in San Antonio, Texas, to the list. On January 22, 2008, and February 8, 2008, respectively, the Commissioner signed MOA's approving the designation of user fee status for Capital City Airport and Kelly Field Annex.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because these amendments merely update the list of user fee airports to include airports already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither impose additional burdens on, nor take away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. These amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Signing Authority

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

Amendments to Regulations

■ Part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

[1] Sections 403(1) and 411 of the Homeland Security Act of 2002 (''the Act,'' Pub. L. 107–296) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the ''Customs Service'' as the ''Bureau of Customs and Border Protection.'' Effective on March 31, 2007, DHS changed the name of ''Bureau of Customs and Border Protection'' to ''U.S. Customs and Border Protection (CBP)'' (See 72 FR 20131, April 23, 2007).

PART 122—AIR COMMERCE REGULATIONS

■ 1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

§ 122.15 [Amended]

■ 2. The listing of user fee airports in § 122.15(b) is amended as follows: by adding, in alphabetical order, in the ''Location'' column ''Lansing, Michigan'' and by adding on the same line, in the ''Name'' column, ''Capital City Airport''; by adding, in alphabetical order, in the ''Location'' column ''San Antonio, Texas'' and by adding on the same line, in the ''Name'' column ''Kelly Field Annex.''

Dated: June 18, 2008.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. E8–14125 Filed 6–20–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 558

New Animal Drugs; Change of Sponsor's Drug Labeler Code

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's drug labeler code for ADM Alliance Nutrition, Inc. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective June 23, 2008.

FOR FURTHER INFORMATION CONTACT: Charise Kasser, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9069, e-mail: *charise.kasser@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115, has informed FDA that it has obtained a new drug labeler code (DLC) in 2007, which has not been reflected in the animal drug regulations. Accordingly, the regulations in 21 CFR 510.600, 520.445b, 520.2380a, 558.95, 558.128, 558.274, 558.311, 558.355, 558.485, 558.625, and 558.630 are amended to reflect this new DLC. This action is being taken to improve the accuracy of the regulations.

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

List of Subjects

21 CFR Part 510

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

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), revise the entry for ''ADM Alliance Nutrition, Inc.''; and in the table in paragraph (c)(2), remove the entry for ''021930'' and in numerical sequence add an entry for ''012286'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115	012286
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* * *	* *
012286	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115
* * *	* *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.445b [Amended]

■ 4. In paragraph (b)(4) of § 520.445b, remove ''021930'' and in its place add ''012286''.

§ 520.2380a [Amended]

■ 5. In paragraph (c)(3) of § 520.2380a, remove ''021930'' and in its place add ''012286''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 6. The authority citation for 21 CFR part 558 continues to read as follows:

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

§ 558.95 [Amended]

■ 7. In paragraph (a)(4) of § 558.95, remove ''016968, 017790, and 021930'' and in its place add ''012286, 016968, and 017790''.

§ 558.128 [Amended]

■ 8. In § 558.128, in paragraph (b)(2), remove ''021930'' and in its place add ''012286''; and in the tables in paragraphs (e)(1) through (e)(4), in the ''Sponsor'' column, remove ''021930'' wherever it occurs and in its place add ''012286''.

§ 558.274 [Amended]

■ 9. In § 558.274, in paragraph (a)(7), remove ''021930'' and in its place add ''No. 012286''; and in the table in paragraphs (c)(1)(i) and (c)(1)(ii) in the ''Sponsor'' column, remove ''021930'' and in numerical sequence add ''012286''.

§ 558.311 [Amended]

■ 10. In paragraph (b)(5) of § 558.311, remove ''017800 and 021930'' and in its place add ''012286 and 017800''.

§ 558.355 [Amended]

■ 11. In paragraph (b)(13) of § 558.355, remove ''021930'' and in its place add ''No. 012286''.

§ 558.485 [Amended]

■ 12. In paragraph (b)(3) of § 558.485, remove ''021930'' and in numerical sequence add ''012286''.

§ 558.625 [Amended]

■ 13. In paragraphs (b)(10) and (b)(12) of § 558.625, remove ''021930'' and in its place add ''No. 012286''.

§ 558.630 [Amended]

■ 14. In § 558.630, in paragraph (b)(2), remove ''021930'' and in its place add ''012286; and in paragraph (b)(5), remove ''021930'' and in numerical sequence add ''012286''.

Dated: June 9, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–14149 Filed 6–20–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 860, 862, 864, 866, 868, 872, 874, 876, 878, 880, 882, 886, 888, 890, and 892

[Docket No. FDA–2008–N–0331]

Medical Devices; Change of Name; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to implement a nomenclature change and to ensure accuracy and clarity in the agency's regulations.

DATES: This rule is effective June 23, 2008.

FOR FURTHER INFORMATION CONTACT: Paul S. Gadiock, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 240–276–2343.

SUPPLEMENTARY INFORMATION:

I. Background

This document amends FDA's regulations to reflect a nomenclature change. It replaces the phrase ''good manufacturing practice regulations'' with the phrase ''good manufacturing practice requirements of the quality system regulation'' in 21 CFR parts 860, 862, 864, 866, 868, 872, 874, 876, 878, 880, 882, 886, 888, 890, and 892.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because these changes are nonsubstantive.

II. Environmental Impact

The agency has determined under 21 CFR 25.30(i) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule makes only typographical and nonsubstantive changes in existing regulations and does not change in any way how devices are regulated, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Paperwork Reduction Act of 1995

FDA has determined that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 860, 862, 864, 866, 868, 872, 874, 876, 878, 880, 882, 886, 888, 890, and 892 are amended as follows:

PARTS 860, 862, 864, 866, 868, 872, 874, 876, 878, 880, 882, 886, 888, 890, and 892—[AMENDED]

■ 1. Parts 860, 862, 864, 866, 868, 872, 874, 876, 878, 880, 882, 886, 888, 890, and 892 are amended by removing the phrase ''good manufacturing practice regulations'' wherever it appears and by adding in its place the phrase ''good manufacturing practice requirements of the quality system regulation''.

Dated: June 13, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–14153 Filed 6–20–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0321]

Special Local Regulation; Thunderboat Regatta; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Thunderboat Regatta special local regulation in Fiesta Bay of Mission Bay, San Diego from 7:30 a.m. on September 19, 2008 through 5:30 p.m. on September 21, 2008. This action is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. During the enforcement period, no person or vessel may enter the special local regulation without permission of the Captain of the Port or his designated representative.

DATES: The regulations in 33 CFR 100.1101 will be enforced from 7:30 a.m. on September 19, 2008 through 5:30 p.m. on September 21, 2008.

FOR FURTHER INFORMATION CONTACT: Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7233.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the Thunderboat Regatta in 33 CFR 100.1101 on September 19, 2008, from 7:30 a.m. to 5:30 p.m., September 20, 2008, from 7:30 a.m. to 5:30 p.m., and September 21, 2008, from 7:30 a.m. to 5:30 p.m.

Under the provisions of 33 CFR 100.1101, a vessel may not enter the regulated area, unless it receives permission from the COTP. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1101(a) and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers. If the COTP or his designated representative determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: 8 June 2008.

C.V. Strangfeld,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E8–14047 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0399]

RIN 1625–AA00

Safety Zone; San Diego Symphony Orchestra; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone, on the navigable waters of the San Diego Bay in support of the San Diego Symphony Opera fireworks display series. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 9 p.m. on June 14, 2008 through 10 p.m. on August 31, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0399 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7233. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The logistical details of the fireworks show were not finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete.

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**. The issuance of the final approval and permitting was so recent that the rule would be made effective less than 30 days after publication. In addition, it would be contrary to the public interest not to publish this rule due to protection from inherent dangers to the crew and public that are present from a fireworks display.

Background and Purpose

The San Diego Symphony Orchestra and Copley Symphony Hall is sponsoring the San Diego Symphony Orchestra, which will include a fireworks presentation from a barge in the San Diego Bay. The barge will be located near the maritime navigational channel in the vicinity of North Embarcadero. The safety zone will be a 150 yard radius around the anchored firing barge. The sponsor will provide a chase boat to patrol the safety zone and inform vessels of the safety zone. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other vessels and users of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone that would be effective from 9 p.m. to 10 p.m. on June 14, June 27–28, July 4–6, July 11–13, July 18–20, July 24–26, August 1–3, August 8–10, August 15–16, August 21–23, and August 29–31, 2008. The limits of the safety zone would be a 150 yard radius around the anchored firing barge located at approximately 32°42′12″ N, 117°10′01″ W.

The safety zone is necessary to provide for the safety of the crews, spectators, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and

Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 transit or anchor in a portion of the San Diego Bay from 9 p.m. to 10 p.m. on June 14, June 27–28, July 4–6, July 11–13, July 18–20, July 24–26, August 1–3, August 8–10, August 15–16, August 21–23, and August 29–31, 2008.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 1 hour late in the evening when vessel traffic is low. Vessel traffic can pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this 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.

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.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section

2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''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, and Waterways.

Words of Issuance and Regulatory Text

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCES AREAS

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

Authority: 33 U.S.C. 1225, 1231; 46 U.S.C. Chapter 701; 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. A new temporary § 165.T11–036 to read as follows:

§ 165.T11–036 Safety Zone; San Diego Symphony Orchestra; San Diego, CA.

(a) *Location*. The limits of the temporary safety zone would include a 150 radius around the anchored firing barge located at approximately 32°42′12″ N., 117°10′01″ W.

(b) *Enforcement Period*. This section will be enforced from 9 p.m. to 10 p.m. on each of the following days: June 14, June 27–28, July 4–6, July 11–13, July 18–20, July 24–26, August 1–3, August 8–10, August 15–16, August 21–23, and August 29–31, 2008. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Definitions*. The following definition applies to this section: *Designated representative* means any commissioned, warrant, and petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who has been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations*. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through or anchoring within this zone by all vessels is prohibited unless authorized by the Captain of the Port San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: June 6, 2008.

D.L. LeBlanc,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. E8–14045 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0491]

RIN 1625–AA00

Safety Zone; Sigma Financial Fireworks, Lake Huron, Mackinac Island, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Huron, Mackinac Island, MI. This zone is intended to restrict vessels from a portion of Lake Huron during the Sigma Financial Fireworks, June 28, 2008, fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. to 11:59 p.m. on June 28, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0491 and are available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Sector Sault Ste. Marie, 337 Water St, Sault Ste. Marie, MI, 49783 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LCDR Christopher Friese, Prevention Dept. Chief, Sector Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783; 906–635–3220. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective fewer than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazards of fireworks, the Captain of the Port Sault Ste. Marie has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Sigma Financial Fireworks display. The fireworks display will occur between 9 p.m. and 11:59 p.m. on June 28, 2008.

The safety zone for the fireworks will encompass all waters of Lake Huron within a 1000-foot radius from the

fireworks launch site off of Mission Point, with its center in position 45°50′.40″ N, 084°36′.10″ W: [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Ste. Marie, or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this 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 and operators of vessels intending to transit or anchor in a portion of Lake Huron off Mackinac Island, Michigan, between 9 p.m. and 11:59 p.m. on June 28, 2008.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for fewer than three hours for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Ste. Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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.

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone; therefore, paragraph (34)(g) of the Instruction applies.

A final ''Environmental Analysis Check List'' and a final ''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, and 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. 1226, 1231; 46 U.S.C. Chapter 701; 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. A new temporary § 165.T09–0491 is added as follows:

§ 165.T09–0491 Safety Zone; Sigma Financial Fireworks, Lake Huron, Mackinac Island, MI.

(a) *Location*. The following area is a temporary safety zone: All waters of Lake Huron within a 1,000-foot radius from the Fireworks launch site with its center in position 45°50′40″ N, 084°36′10″ W. [DATUM: NAD 83].

(b) *Effective period*. This regulation is effective from 9 p.m. to 11:59 p.m. on June 28, 2008.

(c) *Regulations*.

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sault Ste. Marie, or on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sault Ste. Marie or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Sault Ste. Marie or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Sault Ste. Marie or his on-scene representative.

Dated: June 11, 2008.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of the Port Sault Ste. Marie.

[FR Doc. E8–14049 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0421]

RIN 1625–AA00

Safety Zone: Central Massachusetts Swim Events

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones for four swimming events in the Captain of the Port Boston zone. This rule is intended to restrict vessels from portions of water during events that pose a hazard to public safety. The safety zone is necessary to protect participants and vessels from the hazards associated with a swim event.

DATES: This rule is effective for various events from June 15, 2008 through July 12, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0421 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and U.S. Coast Guard, Sector Boston, 427 Commercial Street, Boston, MA 02019 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Chief Petty Officer Eldridge McFadden at 617–223–3000. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory 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)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The logistics with respect to the events were not provided to the Coast Guard with sufficient time to draft and publish an NPRM, making publication of a Notice of Proposed Rulemaking for this temporary regulations impractical and contrary to the public interest. In addition, the swim events are scheduled

to occur on June 15, June 29, July 11 and July 12, 2008, and any delay in the regulation's effective date would be contrary to the public interest since the safety zones are needed to protect swimmers and the maritime public from the dangers associated with vessels transiting portions of Boston Harbor and Cohasset Harbor during the swim events.

For the same reasons, 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**.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with swim events. Swimming events pose significant risks to public safety and property because of the combination of numerous swimmers, high-speed vessels, and potentially congested waterways.

Discussion of Rule

The safety zones established are necessary to ensure the safety of vessels and people during events in the Captain of the Port Boston area of responsibility, which may pose a hazard to the public. The safety zones described in subparagraph (a) for this regulation will be enforced only immediately before and during the event. The Captain of the Port Boston will inform the public by all appropriate means including Broadcast Notice to Mariners, Local Notice to Mariners, and on-scene Coast Guard or Coast Guard Auxiliary units.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard's implementation of these safety zones will be of short duration and designed to minimize the impact on navigable waters. These safety zones will only be enforced immediately before and during the time the swimmers are in the water. Furthermore, these safety zones have been designed to allow vessels to transit unrestricted to portions of the waterway not affected by the safety zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas designated as safety zones in subparagraphs (a) during the date and time the safety zones are being enforced. These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zones in this rule would be in effect for short periods, and vessels may pass outside the zone with the permission of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this 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.

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.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, 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 that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final environmental analysis checklist and a final 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, and 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. 1226, 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 temporary § 165.T01–0421 to read as follows:

§ 165.T–01–0421 Safety Zones: Central Massachusetts Swim Events.

(a) Location. The following swim events include safety zones as described herein:

(1) Cohasset Triathlon, Sandy Beach, Cohasset, MA

(i) All waters in the vicinity of Cohasset Harbor, from surface to bottom, within a 200-yard radius around Sandy Beach.

(ii) *Effective Date*. This rule will be effective from 7:30 a.m. through 9 a.m. on June 29, 2008.

(2) Swim Across America, Boston, MA to Boston Light, MA

(i) All waters of Boston Harbor, from surface to bottom, within a 100-yard radius around the swimmers swimming from Rowes Wharf to Boston Light.

(ii) *Effective Date*. This rule will be effective from 7 a.m. through 3 p.m. on July 11, 2008.

(3) Swim Across America, Nantasket Beach, Hull, MA

(i) All waters of Nantasket Beach, from surface to bottom, within a 100-yard radius around Nantasket Beach.

(ii) *Effective Date*. This rule will be effective from 9 a.m. through 11 a.m. on July 12, 2008.

(4) Charles River One Mile Swim, Charles River, Boston, MA

(i) All waters of Charles River, from surface to bottom, between the Longfellow Bridge and the Harvard bridge.

(ii) *Effective Date*. This rule will be effective from 7:45 a.m. through 9:15 a.m. on June 15, 2008.

(b) Definition. As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer, or any federal, state, or local law enforcement officer authorized to enforce this regulation on behalf of the Coast Guard Captain of the Port (COTP).

(c) Regulations. (1) In accordance with the general regulations in section 165.23 of this part, entry into or remaining in the safety zones described in paragraph (a) of this section is prohibited unless authorized by the COTP Boston, or the COTP's designated representative.

(2) Persons desiring to transit within the safety zones established in this section may contact the COTP at telephone number 617–223–3008 or via on-scene patrol personnel on VHF channel 16 to seek permission to do so. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his or her designated representative.

Dated: June 12, 2008.

Gail P. Kulisch,

Captain, U. S. Coast Guard Captain of the Port, Boston.

[FR Doc. E8–14128 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0272]

RIN 1625–AA87

Security Zone; Patapsco River, Middle Branch, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on certain waters of the Patapsco River, Middle Branch, in Baltimore Harbor, Baltimore, Maryland, during the USS STERETT Commissioning ceremony. The security zone is necessary to provide for the security of the USS STERETT and the safety of life of event participants, spectators and mariners on U.S. navigable waters during the event. Entry into the zone is prohibited unless authorized by the Captain of the Port or a designated representative.

DATES: This rule is effective from 4 p.m. through 11 p.m. on August 9, 2008.

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0272 and are available online at *http://www.regulations.gov*. This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140,

1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226–1791 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 23, 2008, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Patapsco River, Middle Branch, Baltimore, MD'' in the **Federal Register** (73 FR 21883). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

The Captain of the Port Baltimore is establishing a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against the USS STERETT and a large number of participants at the South Locust Point Marine Terminal, and the surrounding waterfront areas and communities, in Baltimore, Maryland. The security zone is necessary to safeguard life and property on the navigable waters immediately before, during, and after the scheduled event. This zone will help the Coast Guard prevent vessels or persons from bypassing the security measures established on shore for the ceremony and engaging in waterborne terrorist actions during the highly-publicized event.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held. Other than two technical changes—revising the temporary section number (from § 165.T08–0272 to § 165.T05–0272) so that it reflects security zone in the Coast Guard's Fifth District, and revising the word ''rule'' to ''section'' in the effective period paragraph—we have made no changes from the proposed rule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. There is little vessel traffic associated with recreational boating and commercial fishing in the area during the effective period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Patapsco River, Middle Branch, from 4 p.m. through 11 p.m. on August 9, 2008. Smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the security zone. The duration of the security zone will be limited to seven hours. Because the zone is of limited size and duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, we will issue maritime advisories widely available to users of the river.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this 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.

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.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, 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 that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes a security zone.

A final environmental analysis checklist and a final categorical exclusion determination will be 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. 1226, 1231; 46 U.S.C. Chapter 701; 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.T05–0272 to read as follows:

§ 165.T05–0272 Security Zone; Patapsco River, Middle Branch, Baltimore, MD.

(a) *Location*. The following area is a security zone: All waters of the Patapsco River, Middle Branch, from surface to bottom, encompassed by lines connecting the following points, beginning at 39°15′40″ N, 076°35′23″ W, thence to 39°15′24″ N, 076°35′18″ W, thence to 39°15′25″ N, 076°35′54″ W, thence to 39°15′43″ N, 076°35′58″ W, located approximately 1,600 yards east of the Hanover Street (SR–2) Bridge. These coordinates are based upon North American Datum 1983.

(b) *Definitions*. As used in this section, for purposes of enforcing the security zone identified in paragraph (a) of this section, *designated representative* means on-scene Coast Guard patrol personnel, including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by the Captain of the Port Baltimore.

(c) *Regulations*. (1) All persons are required to comply with the general regulations governing security zones found in § 165.33 of this part.

(2) Entry into or remaining in the security zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore, Maryland or his or her designated representative.

(3) Persons desiring to transit the area of the security zone may contact the Captain of the Port Baltimore at telephone number 410–576–2674 or on marine band radio VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. On-scene Coast Guard patrol personnel operating Coast Guard vessels may be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his or her designated representative.

(d) *Effective period*. This section is effective from 4 p.m. through 11 p.m. on August 9, 2008.

Dated: June 12, 2008.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. E8–14130 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 38 and 39

RIN 2900–AM86

Prohibition of Interment or Memorialization in National Cemeteries and Certain State Cemeteries Due to Commission of Capital Crimes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulations to implement section 662 of the National Defense Authorization Act of 2006 (Pub. L. 109–163). Section 662 of the Act prohibits interment and memorialization in a national or State veterans cemetery of certain persons who have been convicted of a Federal or State capital crime and whose conviction is final, unless such a person's sentence was commuted by the President or the Governor of a State. The final rule implements statutory provisions to ensure that the remains of certain persons who have committed Federal or State capital crimes are not interred or memorialized in a national or State veterans cemetery.

DATES: *Effective Date:* June 23, 2008.

Applicability Date: Pursuant to the provisions of Public Law 109–163, the National Defense Authorization Act of 2006, the provisions to this regulation shall apply to interment or memorialization occurring on or after January 6, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Muro, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: (202) 461–6249 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. 2411 prohibit, under specified circumstances, interment or memorialization in VA national cemeteries of certain persons who are convicted of, or are found to have committed, Federal or State capital crimes. Under 38 U.S.C. 2408(d), this prohibition also applies to interment or memorialization in a State veterans cemetery that received a grant from VA on or after November 21, 1997. This final rule implements provisions of the National Defense Authorization Act of 2006, and prohibits interment or memoralization in a VA national cemetery or an affected State veterans cemetery of any person who is convicted of a Federal capital crime and whose conviction is final, unless the sentence was commuted by the President. This final rule also prohibits interment or memoralization in a VA national cemetery or an affected State veterans cemetery of any person who has been convicted of a State capital crime and whose conviction is final, unless the sentence was commuted by the Governor of a State.

We note that regulations governing the VA State Cemetery Grants Program, which appear in part 39 of title 38 of the CFR, previously contained language making eligibility for a VA State Cemetery Grant subject to compliance with the capital crimes prohibitions codified in 38 U.S.C. 2408 and 2411. 67 FR 62,642 (Oct. 8, 2002). These regulations were inadvertently deleted when VA's State Cemetery Grant Regulations were amended in 2004. 69 FR 16,344 (Mar. 29, 2004). The provisions that were inadvertently deleted are being updated to reflect the recent amendments to 38 U.S.C. 2411 and are being reinserted into part 39 of title 38 of the CFR.

Additionally, this final rule will revise the definitions of Federal capital crime and State capital crime in § 38.600 and clarify in § 38.617 what procedures the Under Secretary for Memorial Affairs, or his or her designee, will employ as a good faith effort to determine if a person described in 2411(b) is ineligible for interment in a national cemetery as required under Public Law 109–163. Following passage of the law, VA provided updated guidance to all personnel responsible for processing requests for interment or memorialization that incorporated the revised definitions of Federal and State capital crimes.

Section 662(d)(1) of Public Law 109–163 directed VA to issue regulations to ensure that a person is not interred in any cemetery in the National Cemetery System unless a good faith effort has been made to determine whether the person is ineligible by reason of being a person described in 38 U.S.C. 2411(b). Current VA regulations in 38 CFR 38.617(a) prohibit the interment or memorialization of persons found ineligible under the standards and procedures set forth in 38 CFR 38.617 and 38.618. Section 38.617(e) provides that, if VA has not previously received notice from the relevant authorities (the United States Attorney General or an appropriate State official) that a person was convicted of a capital crime, but there is reason to believe the person may have been so convicted, VA will initiate an inquiry to the relevant authorities and will defer its decision until it has received the information needed to determine whether the person is ineligible for burial. Section 38.618 states that, if VA has reason to believe that a person committed a capital crime but avoided conviction by reason of unavailability for trial due to death or flight to avoid prosecution, VA will initiate an inquiry to the relevant authorities for information on that matter. Further, § 38.618 prescribes procedures VA will follow in order to determine, based on information received from the relevant authorities, whether an individual is ineligible for burial due to the commission of a capital crime, and provides that VA will make its determination only after completion of the prescribed inquiry and applicable procedures under that regulation.

Following enactment of Public Law 109–163, VA reviewed all administrative procedures used to establish interment eligibility and determined the existing procedures are sufficient to ensure that a good-faith effort is made to ensure that individuals otherwise prohibited are not interred in national cemeteries. Accordingly, we are not revising the procedures currently required by VA regulations. However, to make clear that VA will continue to apply those procedures in accordance with the ''good faith'' standard imposed by section 662(d)(1) of Public Law 109–163, VA is revising § 38.617(a) to incorporate the ''good faith'' standard to govern VA's duties under §§ 38.617 and 38.618.

This final rule is necessary to incorporate statutory provisions into VA regulations.

Administrative Procedure Act

Changes made by this final rule reflect implementation of changes in statutory requirements. For the reasons explained above, in response to the rulemaking requirement in section 662(d)(1) of Public Law 109–163, VA is making no substantive changes to its current regulations, but is adding reference to the ''good faith'' standard imposed by the statute. Accordingly, this rule is exempt from the notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Provisions currently in 38 CFR 38.617 and 38.618 providing for requests to Federal and State officials for information concerning capital crimes will apply to fewer than 10 persons annually and therefore do not constitute a collection of information under 5 CFR 1320.3(c).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under the Executive Order because it is unlikely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order, or otherwise meet the criteria listed above.

Regulatory Flexibility Act

The initial and final regulatory flexibility analysis requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule would not affect any small entities. Only individual VA beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is also exempt from the regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.201, National Cemeteries; and 64.202, Procurement of Headstones and Markers and/or Presidential Memorial Certificates, and 64.203, State Cemetery Grants.

List of Subjects in 38 CFR Parts 38 and 39

Administrative practice and procedure, Cemeteries, Claims, Crimes, Criminal offenses, Veterans, Grant Programs—veterans.

Approved: June 16, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR parts 38 and 39 are amended to read as follows:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, chapter 24, 7105, and as noted in specific sections.

■ 2. In § 38.600(b), revise the definitions of ''Federal capital crime'' and ''State capital crime'' to read as follows:

§ 38.600 Definitions.

* * * * *

(b) * * *

Federal capital crime means an offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.

* * * * *

State capital crime means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of imprisonment for life or the death penalty may be imposed.

* * * * *

■ 3. Section 38.617 is amended by revising paragraphs (a), (e)(1)(i), and (e)(1)(ii) to read as follows:

§ 38.617 Prohibition of interment or memorialization of persons who have been convicted of Federal or State capital crimes.

(a) *Persons Prohibited.* The interment in a national cemetery under control of the National Cemetery Administration of the remains of any person, or memorialization in such a cemetery of such person, shall not take place absent a good faith effort by the affected cemetery director, or the Under Secretary for Memorial Affairs, or his or her designee, to determine whether such person is barred from receipt of such benefits because the individual for whom interment or memoralization is sought is:

(1) A person identified to the Secretary of Veterans Affairs by the United States Attorney General, prior to approval of interment or memorialization, as an individual who has been convicted of a Federal capital crime, and whose conviction is final, other than a person whose sentence was commuted by the President.

(2) A person identified to the Secretary of Veterans Affairs by an appropriate State official, prior to approval of interment or memorialization, as an individual who has been convicted of a State capital crime, and whose conviction is final, other than a person whose sentence was commuted by the Governor of a State.

(3) A person found under procedures specified in § 38.618 to have committed a Federal or State capital crime but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

* * * * *

(e)

(1) * * *

(i) The United States Attorney General, in the case of a Federal capital crime, requesting notification of whether the deceased has been convicted of a Federal capital crime; or

(ii) An appropriate State official, in the case of a State capital crime, requesting notification of whether the deceased has been convicted of a State capital crime.

* * * * *

PART 39—STATE CEMETERY GRANTS

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

Authority: 38 U.S.C. 101, 501, 2408.

■ 5. In § 39.5, a new paragraph (d) is added immediately following the authority citation at the end of paragraph (c) to read as follows:

§ 39.5 General requirements for a grant.

* * * * *

(d) Any grant under this part made on or after November 21, 1997, is made on the condition that after the date of receipt of the grant the State receiving the grant, subject to requirements for receipt of notice in 38 U.S.C. 2408 and 2411, will prohibit in the cemetery for which the grant is furnished the interment of the remains of or the memorialization of any person:

(1) Who has been convicted of a Federal capital crime, as defined in § 38.600(b) of this chapter, and whose conviction is final, other than a person whose sentence was commuted by the President;

(2) Who has been convicted of a State capital crime, as defined in § 38.600(b) of this chapter, and whose conviction is final, other than a person whose sentence was commuted by the Governor of a State.

(3) Who has been found by an appropriate State official, under procedures to be established by the State, to have committed a Federal or State capital crime, as defined in § 38.600(b) of this chapter, but to have not been convicted of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(Authority: 38 U.S.C. 501, 2408, 2411).

■ 6. In § 39.6, paragraph (c) (1) and the authority citation at the end of the section are revised to read as follows:

§ 39.6 Preapplication requirements.

* * * * *

(c) * * *

(1) Any cemetery established, expanded, or improved through a grant will be used exclusively for the interment or memorialization of eligible persons, as set forth in §§ 39.2(h) and 39.5(a), whose interment or memorialization is not contrary to the conditions of the grant (see §§ 39.5(d) and 38 U.S.C. 2408 and 2411).

* * * * *

(Authority: 38 U.S.C. 501, 2408, 2411).

* * * * *

[FR Doc. E8–14038 Filed 6–20–08; 8:45 am]

BILLING CODE 8320–01–P

Proposed Rules

Federal Register
Vol. 73, No. 121
Monday, June 23, 2008

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 295

RIN 3206–AL22

Testimony by OPM Employees and Production of Official Records in Legal Proceedings

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management seeks public comment on a proposed rule that would set forth procedures that requesters would have to follow when making demands or requests to an OPM employee to produce official records or provide testimony relating to official information, in connection with a legal proceeding in which OPM is not a party. As proposed, this rule would establish procedures to respond to such demands and requests in an orderly and consistent manner. The proposed rule, among other benefits, will promote uniformity in decisions, protect confidential information, provide guidance to requesters, and reduce the potential for both inappropriate disclosures of official information and wasteful allocation of agency resources.

DATES: Comments must be received on or before August 22, 2008.

ADDRESSES: Send comments to R. Alan Miller, Associate General Counsel, U.S. Office of Personnel Management, Room 7353, 1900 E Street, NW., Washington, DC 20415 or by electronic mail at *Richard.Miller@opm.gov.* For e-mail messages, the subject line should include the following reference: Proposed Rule on Testimony by OPM Employees and Production of Official Records in Legal Proceedings.

FOR FURTHER INFORMATION CONTACT: R. Alan Miller, 202–606–1700.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Office of Personnel Management (OPM) occasionally receives subpoenas and requests for OPM employees to provide evidence in litigation in which OPM is not a party. Often these subpoenas and requests are for OPM records that are not available to the public under the Freedom of Information Act. Also, OPM sometimes receives subpoenas and requests for OPM employees to appear as witnesses in litigation in conjunction with a request for nonpublic records. Requesters have sought information, for example, on retirement records, pay issues, and other program matters, under OPM jurisdiction. Responding to such demands and requests can result in a significant disruption to OPM employees' work schedules. The result is that employees may be diverted from performing their official duties in order to respond to requests from parties in litigation. In order to address this problem, many agencies over the years have issued regulations that are similar to this proposed regulation, governing the circumstances and manner in which an employee may respond to demands for testimony or for the production of documents. Such a regulation was sustained by the United States Supreme Court in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

In *Touhy,* the Supreme Court held that a U.S. Department of Justice (DOJ) official, acting on order of the Attorney General, could not be held in contempt for declining to produce records in response to a subpoena. The employee's refusal was based upon a DOJ regulation that prohibited disclosure of agency files, documents, records, or information without the express approval of the Attorney General. The Court sustained the validity of the DOJ regulations, reasoning that it was appropriate for the Attorney General to prescribe regulations not inconsistent with law for the custody, use and preservation of records, papers, and property pertaining to the Department of Justice.

Briefly summarized, the proposed rule would prohibit disclosure of nonpublic official records or testimony by OPM employees unless there is compliance with the OPM rule. The proposed rule identifies the factors that OPM will consider in making determinations in response to such requests and what information requesters must provide. The proposed rule also addresses when the request should be submitted, the time period for review, potential fees, and any restrictions that may be placed on the disclosure of records or the appearance of an OPM employee as a witness if a request is granted. The proposed charges for witnesses are the same as those provided by the Federal courts and the fees related to production of records are the same as those charged under FOIA. The proposed charges for time spent by an employee to prepare for testimony and for certification of records by OPM are authorized under 31 U.S.C. 9701, which permits an agency to charge for services or things of value that are provided by the agency.

The proposed rule applies to a broad range of matters in legal proceedings in which OPM is not a named party. It also applies to former and current OPM employees as well as OPM consultants and advisers. Former employees are prohibited from testifying about specific matters for which they had responsibility during their active employment unless permitted to testify as provided in the proposed rule. They would not be barred from appearing to testify about general matters unconnected with the specific matters for which they had responsibility.

The proposed regulation will ensure a more efficient use of OPM resources, minimize the possibility of involving OPM in issues unrelated to its responsibilities, promote uniformity in responding to such requests and subpoenas, prevent improper attempts to obtain testimony from OPM personnel as to issues of law, prevent improper attempts to use OPM personnel as expert witnesses against other Federal agencies, and maintain the impartiality of OPM in matters among private litigants. It also would serve OPM's interest in protecting sensitive, confidential, and privilege information and records that are generated in response to the requirements in the personnel laws and regulations.

The proposed OPM rule is internal, and is essentially procedural, not substantive. It would neither create a right to obtain official records or the testimony of an OPM employee nor create any additional right or privilege not already available to OPM to deny any demand or request therefor.

However, failure to comply with the procedures in the proposed rule would be a basis for denying a demand or request submitted to OPM.

Administrative Procedure Act

This proposed rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 60-day comment period. Interested persons are invited to submit written comments to OPM on this proposed regulation, to be received on or before August 22, 2008. OPM will review all comments received and consider any modifications to this proposal which appear warranted.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6), the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule addresses only the procedures to be followed in the production or disclosure of OPM materials and information in litigation where OPM is not a party. Accordingly, OPM has determined that a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the proposed rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation).

Executive Order 12866

In issuing this proposed regulation, OPM has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has not been reviewed by the Office of Management and Budget under that Executive Order since it is not a significant regulatory action within the meaning of the Executive Order.

Executive Order 12988

As Director of OPM, I have reviewed this proposed regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this proposed regulation does not contain information collection requirements that require approval by the Office of Management and Budget. OPM expects the collection of information that is called for by the proposed regulation would involve fewer than ten persons each year.

List of Subjects in 5 CFR Part 295

Administrative practice and procedures, Conflict of Interests, Courts, Government employees, Records, Subpoenas, Testimony.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, for the reasons set forth in the preamble, the U.S. Office of Personnel Management proposes to add a new part 295 to 5 CFR to read as follows:

PART 295—TESTIMONY BY OPM EMPLOYEES AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Subpart A—General Provisions

Sec.
295.101 Scope and purpose.
295.102 Applicability.
295.103 Definitions.

Subpart B—Requests for Testimony and Production of Documents

295.201 General prohibition
295.202 Factors OPM will consider.
295.203 Filing requirements for demands or requests for documents or testimony.
295.204 Service of subpoenas or requests.
295.205 Processing demands or requests.
295.206 Final determination.
295.207 Restrictions that apply to testimony
295.208 Restrictions that apply to released records.
295.209 Procedure when a decision is not made prior to the time a response is required.
295.210 Procedure in the event of an adverse ruling.

Subpart C—Schedule of Fees

295.301 Fees.

Subpart D—Penalties

295.401 Penalties.

Authority: 5 U.S.C. App. (Sec. 1103, Civil Service Reform Act of 1978).

Subpart A—General Provisions

§ 295.101 Scope and purpose.

(a) This part sets forth policies and procedures you must follow when you submit a demand or request to an employee of the U.S. Office of Personnel Management (OPM) to produce official records and information, or provide testimony relating to official information, in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of official records and information.

(b) OPM intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize the possibility of involving OPM in controversial issues not related to our functions;

(3) Prevent the misuse of OPM employees as involuntary expert witnesses for private interests or as inappropriate expert witnesses as to the state of the law;

(4) Maintain OPM's impartiality among private litigants where neither OPM nor any other Federal entity is a named party; and

(5) Protect sensitive, confidential information and the deliberative processes of OPM.

(c) In providing for these requirements, OPM does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of OPM. It does not create any right or benefits, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 295.102 Applicability.

This part applies to demands and requests to employees of OPM in legal proceedings in which OPM is not a named party, for factual or expert testimony relating to official information or for production of official records or information. However, it does not apply to:

(a) Demands upon or requests for a current OPM employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of OPM;

(b) Demands upon or requests for a former OPM employee to testify as to matters in which the former employee was not directly or materially involved while at OPM;

(c) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552(a); and

(d) Congressional or Government Accountability Office (GAO) demands and requests for testimony or records.

§ 295.103 Definitions.

Demand means a subpoena, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records or for the appearance and testimony of an OPM employee that is issued in a legal proceeding.

General Counsel means the General Counsel of OPM or a person to whom

the General Counsel has delegated authority under this part.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

OPM means the U.S. Office of Personnel Management.

OPM employee or *employee* means:

(1) Any current or former officer or employee of OPM;

(2) Any other individual hired through contractual agreement by or on behalf of the OPM or who has performed or is performing services under such an agreement for OPM; and

(3) Any individual who served or is serving in any consulting or advisory capacity to OPM, whether formal or informal.

(4) Provided, that this definition does not include persons who are no longer employed by OPM and who are retained or hired as expert witnesses or who agree to testify about general matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with OPM.

Records or *official records and information* mean:

(1) All documents and materials which are OPM agency records under the Freedom of Information Act, 5 U.S.C. 552;

(2) All other documents and materials contained in OPM files; and

(3) All other information or materials acquired by an OPM employee in the performance of his or her official duties or because of his or her official status.

Request means any informal requests, by whatever method, for the production of records and information or for testimony which has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, recorded interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Requests for Testimony and Production of Documents

§ 295.201 General prohibition.

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the General Counsel.

§ 295.202 Factors OPM will consider.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to an appropriate demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(c) OPM has an interest in the decision that may be rendered in the legal proceeding;

(d) Allowing such testimony or production of records would assist or hinder OPM in performing its statutory duties or use OPM resources in a way that will interfere with the ability of OPM employees to do their regular work;

(e) Allowing such testimony or production of records would be in the best interest of OPM or the United States;

(f) The records or testimony can be obtained from other sources;

(g) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(h) Disclosure would violate a statute, Executive order or regulation;

(i) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential commercial or financial information, or would otherwise be inappropriate for release;

(j) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceedings, or compromise constitutional rights;

(k) Disclosure would result in OPM appearing to favor one private litigant over another private litigant;

(l) Disclosure relates to documents that were produced by another agency;

(m) A substantial Government interest is implicated;

(n) The demand or request is within the authority of the party making it;

(o) The demand improperly seeks to compel an OPM employee to serve as an expert witness for a private interest;

(p) The demand improperly seeks to compel an OPM employee to testify as to a matter of law;

(q) The demand or request is sufficiently specific to be answered.

§ 295.203 Filing requirements for demands or requests for documents or testimony.

You must comply with the following requirements whenever you issue demands or requests to an OPM employee for official records and information or testimony.

(a) Your request must be in writing and must be submitted to the General Counsel. If you serve a subpoena on OPM or an OPM employee before submitting a written request and receiving a final determination, OPM will oppose the subpoena on grounds that your request was not submitted in accordance with this subpart.

(b) Your written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved.

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on OPM to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an OPM employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require with each OPM employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The Office of Personnel Management reserves the right to require additional information to complete your request where appropriate.

(d) Your request should be submitted at least 45 days before the date that records or testimony is required. Requests submitted in less than 45 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with your request.

§ 295.204 Service of subpoenas or request.

Subpoenas or requests for official records or information or testimony must be served on the General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

§ 295.205 Processing demands or requests.

(a) After service of a demand or request to testify, the General Counsel will review the demand or request and, in accordance with the provisions of this subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) OPM will process requests in the order in which they are received. Absent exigent or unusual circumstances, OPM will respond within 45 days from the date that we receive it. The time for response will depend upon the scope of the request.

(c) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of OPM or the United States or for other good cause.

§ 295.206 Final determination.

The General Counsel makes the final determination on demands and requests to employees for production of official records and information or testimony. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and the court or other authority of the final determination, the reasons for the grant or denial of the demand or request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of an OPM employee.

§ 295.207 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of OPM employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) OPM may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information;

(2) Testify as to facts when the General Counsel determines such testimony would not be in the best interest of OPM or the United States; or

(3) For a current OPM employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of OPM unless testimony is being given on behalf of the United States.

§ 295.208 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, OPM may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original OPM records may be presented for examination in response to a demand or request, but they are not to be presented as evidence or otherwise used in a manner by which they could lose their identity as official OPM records, and they are not to be marked or altered. In lieu of the original records, certified copies will be presented for evidentiary purposes (see 28 U.S.C. 1733).

§ 295.209 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the General Counsel can make the determination referred to in Sec. 295.206, the General Counsel will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the demand or request is being reviewed, and seek a stay of the demand or request pending a final determination.

§ 295.210 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay the demand, the employee upon whom the demand is made will appear at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand, citing *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951). A written response may be offered to a request, or to a demand, if permitted by the court or other competent authority.

Subpart C—Schedule of Fees

§ 295.301 Fees.

(a) Generally. The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to OPM.

(b) Fees for records. Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication will be the same as those charged by OPM in its Freedom of Information Act regulations at 5 CFR part 294.

(c) Witness fees. Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear. Such fees will include cost of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding.

(d) Payment of fees. You must pay witness fees for current OPM employees and any records certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the

Treasury of the United States. In the case of testimony by former OPM employees, you must pay applicable fees directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) Certification (authentication) of copies of records. The U.S. Office of Personnel Management may certify that records are true copies in order to facilitate their use as evidence. If you seek certification, you must request certified copies from OPM at least 45 days before the date they will be needed. The request should be sent to the General Counsel. You will be charged a certification fee of $15.00 for each document certified.

(f) Waiver or reduction of fees. The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(g) De minimis fees. Fees will not be assessed if the total charge would be $10.00 or less.

Subpart D—Penalties

§ 295.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by OPM or as ordered by a Federal court after OPM has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former OPM employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current OPM employee who testifies or produces official records and information in violation of this part may be subject to disciplinary action.

[FR Doc. E8–14059 Filed 6–20–08; 8:45 am]

BILLING CODE 6325–48–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 731

RIN 3206–AL38

Suitability

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: This proposed rule is one of a number of initiatives the U.S. Office of Personnel Management (OPM) has undertaken to simplify and streamline the system of Federal Government investigative and adjudicative processes to make them more efficient and as equitable as possible. A key objective of these initiatives is to limit duplication of efforts by applying reciprocity where appropriate to those processes. This proposed rule would establish the requirements for applying reciprocity to Federal employment suitability determinations and investigations.

DATES: Comments must be received on or before August 22, 2008.

ADDRESSES: Send or deliver written comments to Ana A. Mazzi, Deputy Associate Director for Workforce Relations and Accountability Policy, U.S. Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415; by FAX at (202) 606–2613; or by e-mail at *CWRAP@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert by telephone at (202) 606–2930; by FAX at (202) 606–2613; or by e-mail at *CWRAP@opm.gov*.

SUPPLEMENTARY INFORMATION:

Authorities

Under statutory authorities, 5 U.S.C. 1302, 3301, and 7301; Executive Order 10577, 3 CFR, 1945–1958 Comp., p. 218, as amended; 5 CFR, parts 1, 2 and 5; and related authorities, OPM is assigned the responsibility for ensuring that employees in the competitive service and members of the career Senior Executive Service (and such other employees as may be designated by the President) are suitable for Federal employment. OPM's regulations at 5 CFR part 731 describe the policies and procedures for ensuring these responsibilities are met, including the delegation of suitability authority to departments and agencies. Thus, any proposed changes to these regulations apply only to persons who are in, or in the process of moving into, the competitive service or career Senior Executive Service.

Reciprocity of Background Investigations

Under OPM's current regulations at 5 CFR 731.104, a new background investigation to determine suitability of a current Federal employee in a covered position (e.g., competitive service or career SES position) is not required, except when there has been a change in the employee's public trust risk level or there is a need for reinvestigation under law, rule, or regulation. Specifically, no new investigation is required when a person has been promoted, demoted, reassigned, converted from career-conditional to career tenure, or appointed or converted to an appointment if the person has been serving continuously with the department or agency for at least 1 year in one or more positions subject to investigation. An investigation is also not required when a person is transferred from another department or agency, provided the person has served continuously for at least 1 year in a position subject to investigation. While the current regulation does not require a new investigation in these circumstances, departments and agencies may choose to conduct an investigation and determine a person's suitability where it is not required.

Additional suitability investigations not required by law, rule, or regulation are unnecessary and contribute to inefficiencies in the Federal Government's hiring process. Therefore, OPM is proposing to amend 5 CFR 731.104 to prohibit additional or duplicative investigations on a person, with some limited exceptions.

Under the changes contemplated, the operative rule would be that, in any case where the person previously was investigated at a level that meets or exceeds that required for the new position, was determined suitable under 5 CFR 731 or fit based on character or conduct criteria equivalent to the suitability factors of 5 CFR 731.202, and meets continuous service requirements described in the regulations, reciprocity would be required. The proposed changes would require the application of reciprocity of investigations in many cases where a person is appointed or converted to a covered position, or transfers to a covered position, after serving in another covered position. It also would require reciprocity in many cases where a person moves to a covered position from a position in the excepted service that is not a covered position under this part, or from a position as a Federal Government contract employee. In cases where an investigation of the level described had been conducted, the gaining department or agency could not, with the narrow exceptions discussed below, conduct a new investigation on that person.

A new investigation is required, however, if the reciprocity requirements described above are not met. Other circumstances when an investigation might be required occur when a department or agency obtains new information during the hiring process when a person is transferred to a covered position from another department or agency, or appointed to a covered position from Federal Government contractor employment. In those cases where the new information calls into question the person's suitability under section 731.202, an

investigation would be required. New information might be obtained, for example, from a newly-executed Declaration for Federal Employment, Optional Form 306.

Criteria based on character or conduct that are equivalent to the suitability factors under 5 CFR 731.202 would include the disqualification factors provided at 5 CFR 302.203 or similar authority regarding excepted service employees, the additional credentialing standards provided in OPM's January 18, 2008, memorandum entitled, ''Interim Credentialing Standards for Issuing Personal Identity Verification Cards Under HSPD–12,'' and subsequent iterations of these factors or standards issued by OPM from time to time.

Investigation Requirements for Position Risk Level Changes

OPM proposes to remove from section 731.104, ''Appointments subject to investigation,'' personnel actions, such as promotion, demotion and reassignments, that are not appointments. Concurrently, proposed modifications to section 731.106 would identify the investigative requirements when an employee experiences a change to higher position risk level due to promotion, demotion, or reassignment (actions that were previously described in section 731.104). In such cases, any required investigative upgrade would be initiated within 14 calendar days after an action such as a promotion is final. Section 731.106 also would be modified to reflect the relationship of position risk determinations under this part with position sensitivity determinations under 5 CFR part 732 when identifying the appropriate level of investigation needed for a particular position. As stated in section 731.106, guidance is provided in OPM issuances for agencies to use in exercising their delegated suitability authority under the regulations. Finally, a new paragraph (d) would be added to section 731.104 to provide that the investigation and reinvestigation requirements for public trust positions under section 731.106 are unaffected.

Reciprocity of Suitability Determinations

Under 5 CFR part 731, subpart B, departments and agencies are authorized to make determinations about whether a person is suitable for Federal employment. The regulation, however, does not address circumstances when a person has already been determined suitable by OPM or an agency. Like redundant investigations, unnecessary or duplicative suitability determinations contribute to inefficiencies in the Federal Government's hiring process. Therefore, consistent with our efforts to eliminate additional and duplicative investigations, OPM is proposing to amend 5 CFR 731.202 to eliminate authority to make a new suitability determination, with some exceptions, on a person already found suitable or fit for employment based on character or conduct.

The general rule would be that if a new investigation for a person is not required under 5 CFR 731.104 or 5 CFR 731.106, as modified, an agency would not be able to make a new suitability determination for a person who has already been the subject of such a determination, with limited exceptions. An example of when reinvestigation might be required, and thus when a new suitability determination could be made, occurs when the person is promoted to a position with a higher risk level.

Another example of when a new suitability determination would be required occurs when there is information in a person's investigative record on file that shows he or she engaged in conduct that is incompatible with the core duties of the relevant covered position to which the person is applying or transferring. The information may not have established a basis to determine the person was unsuitable for the former position but would be an appropriate basis for an agency to make a new suitability determination. For example, the new position in question may be in law enforcement where conduct of a criminal nature is incompatible with core duties of the new position. In such a circumstance, even though the person had previously been determined suitable for a non-law enforcement position, the proposed reciprocity rules would not apply and the department or agency would make a new suitability determination based on the existing investigative record.

When an investigation and new suitability determination are required, the person also could be subject to a suitability action if the agency or OPM were to find him or her unsuitable. This could occur when an appointment to a covered position requiring an investigation involves a person transferring from a covered position with another agency, transferring from a non-covered excepted service position, or being appointed following service to the Federal Government as an employee of a Federal contractor. In each case, the person may meet the definition of an ''applicant'' or ''appointee'' as defined at 5 CFR 731.101 and thus potentially subject to a suitability action. A suitability action could be taken only if the agency or OPM followed the procedures of this part and found that person unsuitable. These circumstances are described in the proposed changes to this part at section 731.104(a)(2), (3), and (4).

None of the proposed changes to this part would affect OPM's discretion to exercise its independent authority as it deems appropriate to make suitability determinations or take suitability actions.

Reporting of Suitability Determinations

In order for departments and agencies to decide whether a new investigation or suitability determination is required for a person or whether the proposed reciprocity policy applies, a repository for suitability information is needed. The Clearance Verification System (CVS) was developed by OPM and is currently maintained by OPM to provide information about investigations and security clearances for individuals. OPM is expanding the scope of CVS to include information about suitability determinations. To ensure that CVS contains the necessary information to support reciprocity of suitability determinations in the Federal Government, OPM is proposing at 5 CFR 731.206 that departments and agencies report to OPM the level and result of each investigation conducted, the suitability determination made, and any suitability action taken for any person for whom a suitability determination is required. The reporting requirements would be described in OPM issuances.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

E.O. 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

E.O. 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988—Civil Justice Reform

This regulation meets the applicable standard set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights of obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 5 CFR Part 731

Administrative practices and procedures, Government employees.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM proposes to amend part 731, title 5, Code of Federal Regulations, as follows:

PART 731—SUITABILITY

Subpart A—Scope

1. The authority citation for part 731 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 7301; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, as amended, 5 CFR, parts 1, 2 and 5.

2. In § 731.104, revise paragraphs (a) introductory text and (a)(1) through (a)(4) and (b)(2) and add paragraphs (d) and (e) to read as follows:

§ 731.104 Appointments subject to investigation.

(a) To establish a person's suitability for employment, appointments to covered positions identified in § 731.101 require the person to undergo an investigation by OPM or by an agency with delegated authority from OPM to conduct investigations. However, except as provided in paragraph (b)(2), an appointment will not be subject to investigation when the person being appointed has undergone a background investigation and the appointment involves:

(1) Appointment or conversion to an appointment in a covered position if the person has been serving continuously with the agency for at least 1 year in one or more covered positions subject to investigation and has received a favorably adjudicated background investigation;

(2) Transfer to a covered position, provided the person has been serving continuously for at least 1 year in a covered position subject to investigation and has received a favorably adjudicated background investigation;

(3) Transfer or appointment from an excepted service position that is not a covered position to a covered position, provided the person has been serving continuously for at least 1 year in a position where the person has been determined fit for appointment based on criteria equivalent to the factors provided at 5 CFR 731.202; or

(4) Appointment to a covered position from a position as an employee working as a Federal Government contract employee, provided the person has been serving continuously for at least 1 year in a job where a Federal agency determined the contract employee was fit to perform work on the contract based on criteria equivalent to the factors provided at 5 CFR 731.202.

* * * * *

(b) * * *

(2) An appointment to a covered position also will be subject to investigation when:

(i) The covered position requires a higher level of investigation than previously conducted for the person being appointed; or

(ii) An agency obtains new information in connection with the person's appointment that calls into question the person's suitability under § 731.202;

* * * * *

(d) Investigation and reinvestigation requirements under § 731.106 for public trust positions are not affected by this section.

(e) For purposes of this section, ''criteria equivalent to the factors provided at 5 CFR 731.202'' are criteria that provide adequate assurance that the person to be appointed, converted to an appointment, or transferred is suitable to be employed in a covered position, as determined by OPM, in issuances under this regulation. A decision by OPM, or by an agency applying guidance from OPM, that a prior fitness determination was not based on criteria equivalent to the factors provided at 5 CFR 731.202, and that a new investigation or adjudication is necessary is not subject to review under section 731.501 of this part.

3. In § 731.106, revise paragraphs (c)(2) and (e) to read as follows:

§ 731.106 Designation of public trust positions and investigative requirements.

* * * * *

(c) * * *

(1) * * *

(2) All positions subject to investigation under this part must also receive a sensitivity designation of Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive, when appropriate. This designation is complementary to the risk designation, and may have an effect on the position's investigative requirement. Sections 732.201 and 732.202 of this chapter detail the various sensitivity levels and investigation types. Procedures for determining investigative requirements for all positions based upon risk and sensitivity will be published in OPM issuances, as described in §§ 731.102(c) and 732.201(b).

* * * * *

(e) *Risk level changes.* If an employee experiences a change to a higher position risk level due to promotion, demotion, or reassignment, or the risk level of the employee's position is changed to a higher level, the employee may remain in or encumber the position. Any upgrade in the investigation required for the new risk level should be initiated within 14 calendar days after the promotion, demotion, reassignment or new designation of risk level is final.

* * * * *

Subpart B—Suitability Determinations

4. In § 731.202, add a new paragraph (d) to read as follows:

§ 731.202 Criteria.

* * * * *

(d) *Reciprocity.* An agency cannot make a new determination under this section for a person who has already been determined suitable or fit based on character or conduct unless a new investigation is required under § 731.104 or § 731.106, or no new investigation is required but the investigative record on file for the person shows conduct that is incompatible with the core duties of the relevant covered position.

5. Add a new § 731.206 to read as follows:

§ 731.206 Reporting requirements.

Agencies must report to OPM the level and result of each background

investigation, suitability determination, and suitability action taken under this part, as required in OPM issuances.

[FR Doc. E8–13990 Filed 6–20–08; 8:45 am]

BILLING CODE 6325–39–P

FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

RIN 3052–AC39

Statement on Regulatory Burden

AGENCY: Farm Credit Administration.

ACTION: Notice of intent; request for comment.

SUMMARY: The Farm Credit Administration (FCA, our, or we) is issuing a notice of regulatory review and request for comment. The FCA will review its regulations to consider whether existing regulations are inefficient or burdensome. The FCA is seeking public comment on the appropriateness of the requirements it imposes on the Farm Credit System (System). We ask for comments on our regulations that may duplicate other requirements, are ineffective, or impose burdens that are greater than the benefits received. We are taking this action to improve the regulatory framework within which System institutions operate.

DATES: Please send your comments to the FCA by August 22, 2008.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site or the Federal eRulemaking Web site. As faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, please consider another means to submit your comment if possible. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov*.
- *FCA Web Site: http://www.fca.gov*. Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- *Fax:* (703) 883–4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT: Jacqui Melvin, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4268, TTY (703) 883–4434, or Mary Alice Donner, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this notice is to continue our comprehensive review of regulations governing the System and to eliminate, consistent with law, safety, and soundness, all regulations that are unnecessary, unduly burdensome or costly, or not based on the law. We are requesting public comment to identify FCA regulations that:

- May duplicate other requirements;
- Are ineffective; or
- Impose burdens that are greater than the benefits received.

To accomplish our objective, we are targeting particular regulations for a more focused and in-depth review.

II. Background

The FCA is the independent Federal agency in the executive branch of the Government responsible for examining and regulating System institutions. As a Government-sponsored enterprise, the System primarily provides loans to farmers, ranchers, aquatic producers and harvesters, agricultural cooperatives, and rural utilities.

III. Regulations Under Review

The regulations of FCA that are subject to regulatory review described in this notice are codified in title 12, chapter VI, of the Code of Federal Regulations. In our previous notices, we asked the public to comment on all of our regulations, and we were able to accomplish our objective of reducing regulatory burden. In this notice, we would like the public to comment specifically on these targeted regulations:

(1) Part 607—Assessment and Apportionment of Administrative Expenses;
(2) Part 614—Loan Policies and Operations;
(3) Part 616—Leasing;
(4) Part 617—Borrower Rights;
(5) Part 618—General Provisions; and
(6) Part 626—Nondiscrimination in Lending.

IV. Requesting Comments

Your comments are appreciated and will assist us in our continuing efforts to identify and reduce regulatory burden on System institutions. We will also continue our efforts to maintain and adopt regulations and policies that are necessary to implement the Farm Credit Act of 1971, as amended, and ensure the safety and soundness of the System. These actions will enable the System to better serve America's farmers, ranchers, aquatic producers and harvesters, agricultural cooperatives, and rural utilities in changing agricultural credit markets.

Dated: June 17, 2008.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E8–14101 Filed 6–20–08; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0685; Directorate Identifier 2008–CE–037–AD]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Model DA 42 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The original designed bellcrank for the aileron control system in the wing needed to be installed with slightly bent rod ends during production of the aircraft to avoid friction and possible chafing. In addition to being a nonpreferable production practice, this creates the risk of replacement parts being installed during subsequent in-service maintenance without being bent or not being bent correctly. This condition, if not detected and corrected, could lead to chafing damage of the aileron control system and consequent loss of control of the aircraft.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 23, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, 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.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

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–2008–0685; Directorate Identifier 2008–CE–037–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 because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2008–0086, dated May 13, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

The original designed bellcrank for the aileron control system in the wing needed to be installed with slightly bent rod ends during production of the aircraft to avoid friction and possible chafing. In addition to being a nonpreferable production practice, this creates the risk of replacement parts being installed during subsequent in-service maintenance without being bent or not being bent correctly. This condition, if not detected and corrected, could lead to chafing damage of the aileron control system and consequent loss of control of the aircraft. Diamond Aircraft Industries GmbH has now developed a new aileron bellcrank that allows for additional angular movement of the push rod, thereby eliminating the chafing risk without using bent rod ends.

For the reasons described above, this EASA Airworthiness Directive (AD) requires the replacement of the aileron bellcrank with an improved part and the replacement of any bent rod ends P/N DAI–9027–00–01. In addition, this AD prohibits the reinstallation of P/N DA4–2717–50–00 aileron bellcranks and bent rod ends P/N DAI–9027–00–01 as replacement in the future.

Relevant Service Information

Diamond Aircraft Industries GmbH has issued Mandatory Service Bulletin No. MSB–42–043/1, dated April 3, 2008; Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–043, dated February 4, 2008; and Diamond Aircraft Industries GmbH Drawing Number D60–2717–00–00, dated January 24, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have 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 and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 156 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour (no labor cost; 3 work-hours warranty given by manufacturer). Required parts would cost $0 (warranty credit given by manufacturer) per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $0, or $0 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this 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); and

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

We prepared a 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, 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 AD:

Diamond Aircraft Industries GmbH: Docket No. FAA–2008–0685; Directorate Identifier 2008–CE–037–AD.

Comments Due Date

(a) We must receive comments by July 23, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model DA 42 airplanes, all serial numbers, with aileron bellcranks part number (P/N) DA4–2717–50–00 installed, certificated in any category.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The original designed bellcrank for the aileron control system in the wing needed to be installed with slightly bent rod ends during production of the aircraft to avoid friction and possible chafing. In addition to being a nonpreferable production practice, this creates the risk of replacement parts being installed during subsequent in-service maintenance without being bent or not being bent correctly. This condition, if not detected and corrected, could lead to chafing damage of the aileron control system and consequent loss of control of the aircraft. Diamond Aircraft Industries GmbH has now developed a new aileron bellcrank that allows for additional angular movement of the push rod, thereby eliminating the chafing risk without using bent rod ends.

For the reasons described above, this EASA Airworthiness Directive (AD) requires the replacement of the aileron bellcrank with an improved part and the replacement of any bent rod ends P/N DAI–9027–00–01. In addition, this AD prohibits the reinstallation of P/N DA4–2717–50–00 aileron bellcranks and bent rod ends P/N DAI–9027–00–01 as replacement in the future.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, replace the aileron bellcrank, P/N DA4–2717–50–00, with the improved design aileron bellcrank, P/N DA4–2717–50–00_01, and replace any bent rod ends, P/N DAI–9027–00–01, with straight rod ends, P/N DAI–9027–00–01, following Mandatory Service Bulletin No. MSB–42–043/1, dated April 3, 2008; Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–043, dated February 4, 2008; and Diamond Aircraft Industries GmbH Drawing Number D60–2717–00–00, dated January 24, 2008.

(2) As of the effective date of this AD, do not install any aileron bellcrank, P/N DA4–2717–50–00, or bent rod ends, P/N DAI–9027–00–01.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2008–0086, dated May 13, 2008; Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB–42–043/1, dated April 3, 2008; Diamond Aircraft Industries GmbH Work Instruction WI–MSB–42–043, dated February 4, 2008; and Diamond Aircraft Industries GmbH Drawing Number D60–2717–00–00, dated January 24, 2008, for related information.

Issued in Kansas City, Missouri, on June 17, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14078 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2002–0064; FRL–8683–6]

RIN 2060–AK26

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—n-Propyl Bromide in Adhesives, Coatings, and Aerosols; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment period.

SUMMARY: The Environmental Protection Agency (EPA) is making available to the public information related to a May 30, 2007 proposed rule under the Significant New Alternatives Policy

(SNAP) program under section 612 of the Clean Air Act. The SNAP program reviews alternatives to Class I and Class II ozone-depleting substances and finds acceptable the use of alternatives that reduce the overall risk to public health and the environment. EPA proposed to list n-propyl bromide (nPB) as unacceptable for use as a substitute for chlorofluorocarbon (CFC)–113, methyl chloroform, and hydrochlorofluorocarbon (HCFC)–141b in the adhesive and aerosol solvent end uses; and acceptable subject to use conditions (limited to coatings at facilities that, as of May 30, 2007, had provided EPA with information demonstrating their ability to maintain acceptable workplace exposures) as a substitute for methyl chloroform, CFC–113, and HCFC–141b in the coatings end use. The Agency has received additional information regarding the exposure levels of n-propyl bromide found in the workplace due to use of aerosols containing n-propyl bromide, as well as information on industry practices from aerosol suppliers and from a survey of a significant number of end users. The Agency is requesting comment on these materials. We plan to consider this information, and any comments received during the comment period on this notice of data availability, in determining what future action to take on our May 2007 proposal regarding the use of n-propyl bromide in aerosols.

DATES: Comments must be received on or before August 22, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0064, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: A–And–R–Docket@epa.gov*.
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2002–0064.
- *Hand Delivery:* EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2002–0064. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2002–0064. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://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 *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 343–9163; fax number (202) 343–2362; e-mail address: *sheppard.margaret@epa.gov*. Notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone World Wide Web site at *http://www.epa.gov/ozone/snap/regs*.

SUPPLEMENTARY INFORMATION:

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I. What Should I Consider as I Prepare My Comments for EPA?

A. Submitting Confidential Business Information (CBI)

Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Send or deliver information identified as CBI only by delivery service to the following address: Margaret Sheppard, U.S. EPA, 1310 L Street, NW., Room 1029, Washington DC 20005, Attention Docket ID No. EPA–HQ–OAR–2002–0064.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** (FR) date, and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
• Describe any assumptions and provide any technical information and/or data that you used.
• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
• Provide specific examples to illustrate your concerns, and suggest alternatives.
• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
• Make sure to submit your comments by the comment period deadline identified.

C. How Can I Get Copies of Related Information?

The specific public comments and data on which EPA is taking comment are available in Docket ID No. EPA–HQ–OAR–2002–0064 (continuation of Air Docket A–91–42). The physical address for EPA's docket is discussed above in the **ADDRESSES** section of this action. These documents and other information concerning EPA's May 30, 2007 proposed rulemaking are available electronically through *http://www.regulations.gov,* as discussed above in the **ADDRESSES** section of this action. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Is This Action?

We are requesting comment on additional information received during and after the public comment period concerning industry practices and workplace exposure levels of n-propyl bromide when it is used as an aerosol solvent. The May 30, 2007 proposed rule, 72 FR 30168, proposed to list the chemical n-propyl bromide as an unacceptable substitute for methyl chloroform (1,1,1-trichloroethane), CFC–113 (1,1,2-trifluoro-1,2,2-trichloroethane), and HCFC–141b (1,1-dichloro-1-fluoroethane) when used in aerosol solvents. EPA proposed that nPB in this end use poses unacceptable risks to human health when compared with other substitutes that are available. In addition, EPA took comment on alternate options that would find nPB acceptable subject to use conditions in aerosol solvents.

In response to the May, 2007 proposal, EPA received public comments, which have been made available to the public through docket EPA–HQ–OAR–2002–0064. Most of these comments concerned the Agency's proposal to find nPB unacceptable in aerosols.[1] In the proposal, we stated: ''EPA's greatest concern with nPB-based aerosols is that users of nPB as an aerosol solvent cannot reliably maintain exposures at sufficiently low levels to ensure that workers are protected. This finding is based on measured exposure data and model estimations indicating the likelihood of elevated concentrations associated with nPB-based aerosols given typical ventilation conditions.'' (72 FR 30188)

III. On What Information Is EPA Requesting Comment?

EPA is requesting comment on the public comments and data in the following documents in:

Docket EPA–HQ–OAR–2002–0064:
• July 30, 2007 Comments submitted by D. Douglas Fratz, Vice President, Scientific and Technical Affairs, and Andrew R. Hackman, Manager, State Affairs Programs, Consumer Specialty Products Association (CSPA) and attachments—docket items EPA–HQ–OAR–2002–0064–0319 and EPA–HQ–OAR–2002–0064–0319.1.
• November 16, 2007 Supplemental Comments submitted by D. Douglas Fratz, Vice President, Scientific & Technical Affairs and Andrew Hackman, Manager, State Affairs Programs, CSPA and attachments—docket items EPA–HQ–OAR–2002–0064–0327, EPA–HQ–OAR–2002–0064–0327.1, and EPA–HQ–OAR–2002–0064–0327.2.
• E-mail exchanges between M. Sheppard, EPA, and A. Hackman, CSPA—docket items EPA–HQ–OAR–2002–0064–0340, EPA–HQ–OAR–2002–0064–0341, EPA–HQ–OAR–2002–0064–0342, and EPA–HQ–OAR–2002–0064–0344.

IV. Where Can I Get the Data and Comments Being Made Available for Comment?

All of the data on which we are seeking comment can be obtained through docket EPA–HQ–OAR–2002–0064 at *http://www.regulations.gov*. You also can find this information in hard copy through EPA's Air and Radiation Docket in the Public Reading Room at the address given in the **ADDRESSES** section above.

V. Why Is EPA Requesting Comment on These Data and Comments?

We are soliciting comment on this new information to ensure that we use the best information available when we determine how to proceed on our May 2007 proposal, in which we proposed to list nPB as unacceptable in the aerosol solvent end use. The information which we are seeking comment on will be considered by EPA in determining how to proceed on our proposal and because it substantially expands data for this end use beyond the information the Agency had available at the time we issued the proposed rule, the Agency is now providing the public with an opportunity to comment on the quality, accuracy and representativeness of the information. We will consider this information, along with other data and public comments also available in the public docket, to move forward with a final rulemaking concerning nPB in the aerosol solvent end use.

VI. What Is EPA Not Taking Comment On?

EPA is not taking additional comment on exposure data or industry practices in end uses of adhesives and coatings. EPA is only taking on comment in the end use of aerosol solvents. Furthermore, we are only accepting comments on the quality, accuracy, and representativeness of the information and comments described in this action.

VII. What Supporting Documentation Do I Need To Include in My Comments?

Please provide any information or data supporting your comments, particularly information on exposure levels, the amount of nPB usage, and ventilation levels when nPB is used as an aerosol solvent.

Dated: June 4, 2008.

Brian McLean,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. E8–14103 Filed 6–20–08; 8:45 am]

BILLING CODE 6560–50–P

[1] Comments were also received on the other two aspects of that proposal which concerned nPB as a substitute for methyl chloroform, CFC–113, and HCFC–141b in the adhesives and coatings end uses.

Notices

Federal Register

Vol. 73, No. 121

Monday, June 23, 2008

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

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Enhanced Technologies, Inc. of Greenville, Mississippi an exclusive license to U.S. Patent No. 6,325,215, ''Method and Apparatus for Separating Elastomeric Particulates and Fibers from a Pulverized Mixture'', issued on December 4, 2001.

DATES: Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Enhanced Technologies, Inc. of Greenville, Mississippi has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument, which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E8–14055 Filed 6–20–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Global Protein Products of Winslow, Maine, an exclusive license to U.S. Patent Application Serial No. 11/728,700, ''Decolorization/Deodorization of Corn Zein Products'', filed on March 27, 2007.

DATES: Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Global Protein Products of Winslow, Maine has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument, which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E8–14058 Filed 6–20–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–816)

Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of Antidumping Duty New Shipper Review

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

SUMMARY: On January 23, 2008, the Department of Commerce (the Department) published the preliminary results of the new shipper review of the antidumping duty order on certain corrosion–resistant carbon steel products (CORE) from the Republic of Korea (Korea). This review covers Haewon MSC Co. Ltd. (Haewon). Based on our analysis of comments received[1] concerning our preliminary results, we have made certain changes to these final results in the section listed as *Changes Since the Preliminary Results*. The final results are listed in the section *Final Results of Review* below.

EFFECTIVE DATE: June 23, 2008.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone at (202) 482–5075, or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

[1] Case briefs and rebuttal briefs were submitted by the following domestic interested parties and respondent: On February 22, 2008, United States Steel Corporation (US Steel), and Nucor Corporation (Nucor) (collectively, the petitioners) filed case briefs (respectively, US Steel's Case Brief, and Nucor's Case Brief). On February 29, 2008, US Steel, and Nucor filed rebuttal briefs (respectively, US Steel's Rebuttal Brief, and Nucor's Rebuttal Brief). On February 22, 2008, Haewon MSC Co. Ltd. (Haewon) filed a case brief (Haewon's Case Brief). On February 29, 2008, respondent filed a rebuttal brief (Haewon's Rebuttal Brief).

Background

On January 23, 2008, the Department published the preliminary results of the new shipper review of the antidumping duty order on CORE from Korea. *See Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty New Shipper Review*, 73 FR 3925 (January 23, 2008) (Preliminary Results).

Scope of the Order

This order covers flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in the order are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process including products which have been beveled or rounded at the edges (*i.e.*, products which have been ''worked after rolling''). Excluded from this order are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Bona Fide Analysis

In the *Preliminary Results*, we found that Haewon's reported U.S. sale was a *bona fide* sale, as required by 19 CFR 351.214(b)(2)(iv)(c) based on the totality of facts on the record. *See* Memorandum from George McMahon and Victoria Cho, Case Analysts, to Melissa Skinner, Office Director, in the file entitled, ''Corrosion–Resistant Carbon Steel Flat Products from Korea: Antidumping New Shipper Review of Haewon MSC Co., Ltd.: Bona Fide Analysis Memorandum,'' (Bona Fide Memo), dated January 15, 2008, on file in the Central Records Unit for Import Administration (CRU), room 1117, of the main Department of Commerce building. For the Final Results, we continue to find that Haewon's sale was a *bona fide* commercial transaction. *See* Haewon's Final Results Calculation Memo.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the April 14, 2008, ''Issues and Decisions for the Final Results of the New Shipper Review of the Antidumping Duty Order on Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea'' (Decision Memorandum), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://www.ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made changes in the calculations for the final dumping margin. The Department has reconsidered its position from the preliminary results with respect to Haewon's toll produced CORE that was preliminarily excluded from the company's home market sales database. The facts in this case indicate that in the back–to-back transactions, Haewon purchased cold–rolled coil from Company A[2], galvanized the coil into CORE, and then sold the CORE back to Company A. In both transactions, title passed, first from Company A to Haewon for the cold–rolled coil, and then from Haewon to Company A for the CORE. Based upon these facts, we determine that Haewon transferred ownership in the CORE to Company A for consideration. Accordingly, we find that these sales constitute sales of foreign like product that should be included in Haewon's home market database and included in the dumping margin calculation for these final results.

In addition, we have revised Haewon's SG&A calculation for these final results to include certain expenses. Due to the proprietary nature of this issue, *see* Comment 9 of the accompanying Issues and Decision Memorandum and the ''Final Results Calculation Memorandum.'' For purposes of these final results, we disregarded below cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Furthermore, we used constructed value (CV) when making comparisons for Haewon's normal value to export price. *See* sections 773(a)(4) and 773(e)(2)(B)(ii) of the Act. For further details, *see* the ''Final Results Calculation Memorandum.''

Final Results of Review

We find that the following dumping margin exists for the period August 1, 2006, through April 10, 2007:[3]

[2] Due to the proprietary nature of this discussion, see the accompanying Issues and Decision Memorandum at Comment 7 and the Final Results Calculation Memorandum.

[3] Note that the Department extended the POR until April 10, 2007 in order to include HMSC's U.S. sale, which entered on this particular date. *See* Department's letter to Haewon, dated May 23, 2007.

Exporter/manufacturer:	Weighted–average margin percentage:
Haewon MSC Co. Ltd.	0.00 percent

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. For subject merchandise produced and exported by Haewon, we will instruct CBP to liquidate entries at the rate indicated above. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of this new shipper review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Rates

The following antidumping duty deposits will be required on all shipments of CORE from Korea entered, or withdrawn from warehouse, for consumption, effective on or after the publication date of this new shipper review, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) for subject merchandise produced and exported by Haewon, the cash deposit rate will be the rate listed above (except no cash deposit will be required if a company's weighted–average margin is *de minimis, i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 17.70 percent, the all others rate established in the LTFV investigation.

Notification to Importers

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

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: June 13, 2008.

David M. Spooner,

Assistant Secretaryfor Import Administration.

APPENDIX I

List of Comments in the Accompanying Issues and Decision Memorandum

Comment 1: Circumvention of the New Shipper Review

Comment 2: Arm's–Length Transaction Between Parties

Comment 3: Haewon's Future Sales

Comment 4: Quantity and Value of Haewon's Sale to the United States

Comment 5: Timely Filing of the New Shipper Review

Comment 6: COP/CV Data for an Inappropriate Period

COP Issues

Comment 7: Revision of Haewon's G&A and Interest Expense Ratios to Account for Tolling

Comment 8: Whether to Recalculate Interest Expenses

Comment 9: Revised SG&A Expenses from Verification

[FR Doc.E8–14129 Filed 6–20–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–489–807)

Certain Steel Concrete Reinforcing Bars from Turkey; Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: June 23, 2008.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656.

Background

The Department of Commerce (the Department) published an antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey on April 17, 1997. *See Antidumping Duty Order: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 18748 (April 17, 1997). On May 30, 2007, the Department published a notice of initiation of an administrative review of the order on rebar from Turkey for the period April 1, 2006, through March 31, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 29968 (May 30, 2007). The review covers four producers/exporters of the subject merchandise to the United States: Ekinciler Demir ve Celik Sanayi A.S./Ekinciler Dis Ticaret A.S., Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S., Izmir Demir Celik Sanayi A.S, and Nursan Celik Sanayi ve Haddecilik, A.S./Nursan Dis Ticaret A.S.

On May 5, 2008, the Department published the preliminary results of the administrative review of the antidumping duty order on rebar from Turkey. *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke in Part*, 73 FR 24535 (May 5, 2008). The final results are currently due no later than September 2, 2008.

Extension of the Time Limit for Final Results of Administrative Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended, (the Act) requires the Department to issue the final results in an administrative review within 120 days of the publication date of the preliminary results. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days after the date on which the preliminary results are published. The Department has determined that completion of the final results of this review within the original time period is not practicable because the Department requires additional time to complete analysis of several complex issues, including certain cost issues for one respondent and a revocation request for another respondent. Therefore, the Department is fully extending the time limit for completion of the final results of the administrative review. The final results are now due no later than November 3, 2008, the next business day after 180 days from publication of the preliminary results.

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

Dated: June 17, 2008.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E8–14124 Filed 6–20–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–890

Wooden Bedroom Furniture from the People's Republic of China: Extension of Time Limits for the Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews

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

EFFECTIVE DATE: June 23, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4474.

Background

The Department of Commerce (''the Department'') published an antidumping duty order on wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC'') on January 4, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China*, 70 FR 329 (January 4, 2005). On March 7, 2007, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review and new shipper reviews of WBF from the PRC for the period January 1, 2006, through December 31, 2006. *See Initiation of Administrative Review of Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China*, 72 FR 10159 (March 7, 2007) and *Wooden Bedroom Furniture from the People's Republic of China: Initiation of New Shipper Reviews*, 72 FR 10158 (March 7, 2007) (''*Initiation of Third Annual New Shipper Reviews*''). On February 13, 2008, the Department published in the **Federal Register** the preliminary results of the second administrative review and the new shipper reviews. *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Reviews and Notice of Partial Rescission*, 73 FR 8273 (February 13, 2008). The final results of the administrative and new shipper reviews are currently due no later than June 12, 2008.

Extension of Time Limit of Final Results.

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days. Completion of the final results of these reviews within the 120–day period is not practicable because the Department conducted verification in the administrative review after publication of the preliminary results, and, therefore, needs additional time to complete verification reports, provide an opportunity for, and analyze, comments by interested parties on the preliminary results and verification reports, and analyze information gathered at verification.

Because it is not practicable to complete these reviews within the time specified under the Act, we are fully extending the time period for issuing the final results of the administrative and new shipper reviews in accordance with section 751(a)(3)(A) of the Act. Therefore, the final results are due no later than August 11, 2008, which is 180 days from publication of the preliminary results. This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: June 9, 2008.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E8–14126 Filed 6–20–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–831

Fresh Garlic from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the New Shipper Reviews

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

EFFECTIVE DATE: June 23, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0780.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 2008, the Department published a notice of initiation of new shipper reviews of fresh garlic from the PRC covering Anqiu Haoshun Trade Co., Ltd., Ningjin Ruifeng Foodstuff Co., Ltd., and Zhengzhou Yuanli Trading Co., Ltd. for the period November 1, 2006, through October 31, 2007. *See Fresh Garlic from the People(s Republic of China: Initiation of New Shipper Reviews*, 73 FR 161 (January 2, 2008). The preliminary results of these new shipper reviews are currently due no later than June 18, 2008.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the ''Act''), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. *See* also 19 CFR 351.214(i)(1). The Act further provides that the Department may

extend that 180-day period to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214 (i)(2).

Extension of Time Limit of Preliminary Results

The Department determines that these new shipper reviews involve extraordinarily complicated methodological issues such as potential affiliation issues, the examination of importer information, and the evaluation of the *bona fide* nature of each company's sales. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for these preliminary results by 120 days, until no later than October 16, 2008. The final results continue to be due 90 days after the date of the issuance of the preliminary results, unless extended.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: June 13, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–14111 Filed 6–20–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On June 6, 2008, Ivaco Rolling Mills 2004 L.P. and Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P. (collectively, ''Ivaco'') filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of the 2005–2006 Antidumping Duty Administrative Review made by the International Trade Administration, respecting Carbon and Certain Alloy Steel Wire Rod from Canada. The determination was published in the **Federal Register** (73 FR 7710) on May 12, 2008. The NAFTA Secretariat has assigned Case Number USA–CDA–2008–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on June 6, 2008, requesting panel review of the determination and order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 7, 2008);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 21, 2008); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 17, 2008.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. E8–14086 Filed 6–20–08; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures 93rd Annual Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Annual Meeting of the 93rd National Conference on Weights and Measures (NCWM) will be held July 13 to 17, 2008. Publication of this notice on the NCWM's behalf is a public service; NIST does not endorse, approve, or recommend any of the proposals contained in this notice or in the NCWM publications listed. The meetings are open to the public but registration is required.

DATES: July 13–17, 2008.

Meeting Location: Sheraton Burlington Hotel, Burlington, Vermont.

FOR FURTHER INFORMATION CONTACT: Carol Hockert, Chief, National Institute of Standards and Technology, Weights and Measures Division, Mailstop 2600, Gaithersburg, MD 20899–2600, or by telephone (301) 975–5507, Fax: (301) 975–8091, or e-mail: *carol.hockert@nist.gov.* Please see NCWM Publication 16 at *http://www.ncwm.net,* which contains meeting agendas, registration forms and hotel information.

SUPPLEMENTARY INFORMATION: The NCWM is an organization of state, county and city weights and measures officials, business and industry representatives, Federal Agencies and other members of the public that come together to, among other things, develop recommendations for standards and test procedures related to weights and measures technology, administration and enforcement. Pursuant to (15 U.S.C. 272(b)(6)), the Weights and Measures Division of the National Institute of Standards and Technology (NIST) supports the NCWM as one of the forums it uses to solicit comments and recommendations on revising or updating a variety of publications related to legal metrology. NIST promotes uniformity among the states in their laws, regulations, test methods and equipment that are used in regulating the weighing and measuring devices, packaging and labeling and other

activities in trade and commerce. Publication of this notice on the NCWM's behalf is a public service; NIST does not endorse, approve, or recommend any of the proposals contained in this notice or in the NCWM publications listed. The meetings are open to the public but registration is required.

The following are descriptions of some of the items that will be considered for adoption at the meeting. Comments will be taken on these and other issues during public hearings on July 14, 2008. The Committees will meet after the hearings to finalize the proposals for possible adoption at voting sessions on July 16 and 17, 2008. The Committees may withdraw or carryover items that need additional development.

The Specifications and Tolerances Committee will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices.'' Those items address weighing and measuring devices used in commercial measurement applications, that is, devices that are normally used to buy from or sell to the general public or used for determining the quantity of product sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of legal metrology, method of sale of commodities regulations and engine fuel labeling.'' This notice only contains information about significant items on the NCWM agenda so many others are not presented.

NCWM Specifications and Tolerances Committee

The following items are proposals to amend NIST Handbook 44:

General Code

Item 310–1. G.S.8. Provisions for Sealing Adjustable Components on Weighing and Measuring Devices: This proposal includes language that clarifies the means that can be used to prohibit devices from facilitating fraud as it applies to the electronically programmed and coded components of weighing or measuring devices. The intent of this proposal is to reduce electronic manipulation or alteration that results in consumers being overcharged for the products or services that they purchase. Examples of fraud issues in the past few years have involved: (1) Users altering, manipulating, or interfering with metrological software interfaced or installed in equipment; and (2) users gaining access to the calibration features of scales because the device was not set up in accordance with the manufacturer's instructions. The Committee is proposing to update the requirements for security seals and other access limitations to the accuracy and other metrological adjustments on weighing and measuring equipment.

Scales Code

Item 320–2. Weight Units and Tare Determinations: This item will require scales to determine net weights with accurate mathematical calculations that take into account the value of the increments displayed at different capacities on devices with single or multiple weighing ranges.

Liquid-Measuring Devices

Item 330–1. Temperature Compensation for Liquid-Measuring Devices: This proposal describes the design specifications, test procedures, and user responsibilities on retail liquid measuring devices that may be equipped with an automatic means to allow the delivery of fuel with its volume adjusted to a specific reference temperature.

NCWM Laws and Regulations Committee

The following voting items are proposals to amend the Engine Fuel Law and Regulation and the Method of Sale of Commodities Regulation in NIST Handbook 130:

Items 223–1 and 237–1. Revisions to the Uniform Engine Fuels, Petroleum Products and Automotive Lubricants Law and Regulation: These proposals include amendments that will update the laws and regulations to reflect the increased use of alternative fuels. They include new provisions for full disclosure of product information to consumers and allow state authorities to inspect records and grant waivers of fuel specifications in the event of a natural disaster or other emergency.

Item 250–1. The Method of Sale of Fresh Fruits and Vegetables: This proposal contains suggested methods of sale (*e.g.*, weight, dry measure, or count) for a wide variety of fruit and vegetables offered for sale in retail stores, farmers markets, and at roadside stands. The intent of the recommendation is to provide consumers with information on the net quantity of contents in packages and to facilitate value comparison.

Dated: June 16, 2008.

Richard F. Kayser,

Chief Scientist.

[FR Doc. E8–14087 Filed 6–20–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XI55

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council to convene its Ad Hoc Grouper Individual Fishing Quota (IFQ) Advisory Panel (AHGIFQAP) via conference call.

DATES: The conference call will be held July 16, 2008, at 1:30 p.m. EDT.

ADDRESSES: The meeting will be held via conference call and listening stations will be available. For specific locations see **SUPPLEMENTARY INFORMATION.**

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Assane Diagne, Economist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The conference call will begin at 1:30 p.m. EDT and conclude no later than 5 p.m. EDT. Listening stations are available at the following locations:

The Gulf Council office (see **ADDRESSES**), and the National Marine Fisheries Service (NMFS) offices as follows: Panama City, FL, 3500 Delwood Beach Road, Panama City, FL 32408; contact: Janice Hamm, telephone: (850)-234–6541.

The AHGIFQAP will hold a conference call to discuss the public hearing draft for Amendment 29 to the Reef Fish Fishery Management Plan. Reef Fish Amendment 29 proposes to rationalize effort and reduce overcapacity in the commercial grouper and tilefish fisheries in order to achieve and maintain optimum yield (OY). Effort management approaches considered in this amendment include permit endorsements and the implementation of an Individual Fishing Quota (IFQ) program.

Although other non-emergency issues not on the agenda may come before the AHGIFQAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during the meeting. Actions will be restricted to the issue specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The listening stations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: June 18, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–14068 Filed 6–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XI53

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee, in July, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, July 8, 2008, at 9:30 a.m.

ADDRESSES: This meeting will be held at the Hilton Garden Inn, One Thurber Street, Warwick, RI 02886; telephone: (401) 734–9600; fax: (401) 734–9700

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review public scoping comments on Amendment 15 and begin development of alternatives. The scoping issues included: implementation of annual catch limits (ACLs); measures to rationalize the limited access scallop fishery; revision of the overfishing definition; modifications to specific aspects of the general category limited entry program implemented by Amendment 11; measures to address essential fish habitat (EFH) closed areas in the Scallop Fishery Management Plan (FMP) if the EFH Omnibus Amendment is delayed; alternatives to improve the research set-aside program and modifying the start date of the scallop fishing year. Other issues may also be discussed based on input from scoping. The committee will also review Section 7 Endangered Species Act Consultation for the Scallop FMP (Biological Opinion) and discuss potential management implications. The committee may discuss other topics at their discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: June 18, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–14066 Filed 6–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XI56

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee on July 10, 2008 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, July 10, 2008, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Gulf of Maine Research Institute, 350 Commercial Street, Portland, ME 04101; telephone: (207) 772–2321; fax: (207) 772–6855.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: In addition to electing a Chairman and Vice Chairman, the Science and Statistical Committee (SSC) will: (1) review and develop comments on the NMFS proposed rule that addresses requirements for annual catch limits and accountability measures; (2) as part of Amendment 16 to the Council's Northeast Multispecies (Groundfish) Fishery Management Plan, review a proposed process for setting northeast multispecies overfishing levels, acceptable biological catch and annual catch limits; (3) review Groundfish Plan Development Team guidance for evaluating uncertainty when setting annual catch limits, and; 4) review analytic techniques for estimating the economic impacts of groundfish management actions.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice

that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: June 18, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–14069 Filed 6–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XI57

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Committee, in July, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, July 10, 2008, at 9:30 a.m.

ADDRESSES: This meeting will be held at the Holiday Inn, 30 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will review the Vulnerability Assessment being developed by the Habitat Plan Development Team to assist the Council in determining appropriate measures (if any) for minimizing the adverse impacts of fishing on essential fish habitat to the extent practicable in the Omnibus Habitat Amendment 2. The Committee may also consider other topics at their discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: June 18, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–14070 Filed 6–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XI59

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Allocation Committee in North Charleston, SC.

DATES: The meeting will take place July 8–9, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at Southern Wesleyan University, Classroom 6, 4055 Faber Place Drive, Suite 301, North Charleston, SC 29406.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The Allocation Committee meeting will take place from 8:30 a.m. - 5 p.m. on July 8, 2008, and from 8 a.m. - 12 noon on July 9, 2008.

The Committee will identify allocation alternatives for species addressed in Amendment 17 to the Snapper Grouper Fishery Management Plan, currently under development by the Council. Amendment 17 establishes Annual Catch Limits and Accountability Measures for 10 species in the snapper grouper management unit currently undergoing overfishing. The allocation alternatives will be presented to the Council's Snapper Grouper Committee for consideration during the Council meeting week, September 15–19, 2008, in Charleston, SC.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: June 18, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–14071 Filed 6–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XI54

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: This notice advises the public that the Western Pacific Fishery Management Council (Council) will convene a meeting of the Mariana Archipelago Plan Team in Mangilao, Guam.

DATES: The Mariana Archipelago Plan Team meeting will be held Tuesday July 8, 2008 through Thursday July 10, 2008. For specific dates, times, and agenda items for the meeting, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting of the Mariana Archipelago Plan Team will be held at the Guam Department of Agriculture Conference Room, 192 Dairy Road, Mangilao, Guam 96923.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The date, time and agenda for the Mariana Archipelago Plan Team meeting are as follows:

Tuesday, July 8, 2008, 9 a.m. - 5 p.m.

1. Introductions
2. Approval of Draft Agenda
3. Plan Team Organizational Structure
4. Report of the March 2008 Plan Team Meeting
5. Bottomfish Annual Report Module
   a. Guam
   b. CNMI

Wednesday, July 9, 2008, 9 a.m. - 5 p.m.

6. Bottomfish Annual Report Module (continued)
   a. Guam
   b. CNMI
7. Coral Reef Ecosystem Annual Report Module
   a. Guam
   b. CNMI

Thursday, July 10, 2008, 9 a.m. - 5 p.m.

8. Coral Reef Ecosystem Annual Report Module (continued)
   a. Guam
   b. CNMI
9. Update on Coral Reef Fishing Local Action Strategy
   a. Guam
   b. CNMI
10. Other Business

The order in which agenda items are addressed may change. Public comment periods will be provided throughout each day's agenda. The Plan Team will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: June 18, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–14067 Filed 6–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board (RFPB) Meetings

AGENCY: Department of Defense; Office of the Secretary of Defense Reserve Forces Policy Board.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following meetings of the Reserve Forces Policy Board (RFPB).

DATES: July 29, 2008 (8 a.m. to 4:30 p.m.) and July 30, 2008 (8 a.m. to 3 p.m.).

ADDRESSES: Meeting addresses are (7/29/08) Department of Homeland Security, 3801 Nebraska Ave., Washington, DC 20393 and (7/30/08) Pentagon, Conference Room TBA, Arlington, VA. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

FOR FURTHER INFORMATION CONTACT: Col Marjorie Davis, Designated Federal Officer, (703) 697–4486 (Voice), (703) 614–0504 (Facsimile), *marjorie.davis@osd.mil*. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: An open quarterly meeting of the Reserve Forces Policy Board.

Agenda: Discussion of homeland security and other issues relevant to the Reserve Components.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. To request a seat, contact the DFO not later than 7/1/08 at 703–697–4486, or by e-mail, *marjorie.davis@osd.mil* and/or *donald.ahern@osd.mil*.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: June 17, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 08–1378 Filed 6–19–08; 11:42 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of

1976(5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the National Security Education Board (hereafter referred to as the Board).

The Board is a non-discretionary federal advisory committee established by the Secretary of Defense to provide the Department of Defense independent advice and recommendations on developing the national capacity to educate U.S. citizens to understand foreign cultures, strengthen U.S. economic competitiveness, and enhance international cooperation and security. The Board, in accomplishing its mission: (a) Develop criteria for awarding scholarships, fellowships, and grants, including an order of priority in such awards that favors individuals expressing an interest in national security issues or pursuing a career in a national security position; (b) provide for wide dissemination of information regarding the activities assisted under national security issues; and (c) establish qualifications for students desiring scholarships or fellowships, and institutions of higher education desiring grants.

The Board shall be composed of not more than 13 members, who shall include members that represent (a) the Secretary of Defense or designee, who shall serve as the Chairperson of the Board; (b) the Secretary of Education or designee; (c) the Secretary of State or designee; (d) the Secretary of Commerce or designee; (e) the Director of Central Intelligence or designee; (f) the Chairperson of the National Endowment for the Humanities; and (g) six people appointed by the President, by and with the advice and consent of the Senate, who shall be experts in the fields of international, language, area and counter proliferation studies education and who may not be full-time officers or employees of the Federal Government. Board members appointed by the President shall be appointed for a period specified by the President at the time of their appointment, but not to exceed four years. In addition, the Secretary of Defense or designee may invite other distinguished Government officers to serve as non-voting observers of the Board, and appoint consultants, with special expertise, to assist the Board on an ad hoc basis. Board members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109. Board members shall, with the exception of travel and per diem for official travel, serve without compensation, unless otherwise authorized.

The Board shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, and other appropriate federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board, nor can they report directly to the Department of Defense or any federal officers or employees who are not Board members.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's chairperson. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all Board meetings and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the National Security Education Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the National Security Education Board.

All written statements shall be submitted to the Designated Federal Officer for the National Security Education Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the National Security Education Board's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the National Security Education Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: June 18, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 08–1379 Filed 6–19–08; 11:50 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 22, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

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.

Dated: June 17, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Binational Migrant Education Program (BMEP) State MEP Director Survey.

Frequency: Annually.

Affected Public: Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 50.

Abstract: The survey collects information from State Migrant Education Programs (MEPs) on their participation in the Binational Migrant Education Program (BMEP) to serve children who migrate between Mexico and the U.S.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3555. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–14114 Filed 6–20–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.326L and 84.326W.

Note: This notice invites applications for two separate competitions. For key dates, contact person information, and funding information regarding each competition, see the chart in the *Award Information* section of this notice.

DATES:

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Deadline for Intergovernmental Review: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and improve results for children with disabilities by supporting technical assistance, model demonstration projects, dissemination of useful information, and implementation activities that are supported by scientifically based research.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv) and (v), these priorities are from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA)). Each of the absolute priorities announced in this notice corresponds to a separate competition as follows:

Absolute priority	Competition CFDA number
Technical Assistance Center on Outcomes for Infants, Toddlers, and Preschool Children with Disabilities.	84.326L
National Dropout Center for Students with Disabilities.	84.326W

Absolute Priorities: For FY 2008 and any subsequent year in which we make awards based on the list of unfunded applicants from these competitions, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition, we consider only applications that meet the absolute priority for that competition.

The priorities are:

Absolute Priority 1—Technical Assistance Center on Outcomes for Infants, Toddlers, and Preschool Children With Disabilities (84.326L).

Background: The Department's Office of Special Education Programs (OSEP) has provided national leadership to support States in their development of early childhood outcome systems (i.e., systems to collect and use child and family outcome data for accountability and program improvement purposes) for the Part C early intervention and Part B preschool programs under IDEA. For example, OSEP funded the Early Childhood Outcomes Center (ECO Center) in 2003 to promote the development and implementation of child and family outcome measures for infants, toddlers, and preschool children with disabilities that could be used in Federal and State accountability systems. At the Federal and State levels, outcome data are needed to monitor and assess the efficacy of Part C early intervention and Part B preschool programs. (For further information on the work of the ECO Center, go to *http://www.the-eco-center.org*).

In the summer of 2005, after considering significant input from the ECO Center and from professionals and families in the early intervention and early childhood special education fields, OSEP announced three functional child outcomes for the Part C early intervention and the Part B preschool programs for States to report on in their State Performance Plans and Annual Performance Reports (SPPs/APRs) beginning with the SPPs/APRs due in February 2008. The child outcomes for Part C and Part B preschool are as follows: The percentages of children receiving services under Part C and Part B preschool programs who demonstrate improved (a) positive social-emotional skills (including social relationships); (b) acquisition and use of knowledge and skills (including early language/communication and, for preschool, early literacy); and (c) use of appropriate behaviors to meet their needs. These outcomes are outlined in the SPP/APR packages under indicator 3 for the Part C program and indicator 7 for the Part B program. Additionally, Part C early intervention programs must report on three family outcomes. The Part C family outcomes are as follows: The percentages of families participating in Part C programs who report that early intervention services have helped them (a) know their rights; (b) effectively

communicate their children's needs; and (c) help their children develop and learn. These outcomes are outlined in the Part C SPP/APR packages under indicator 4. More information on SPPs/APRs is available at: *http://www.rrfcnetwork.org/content/view/248/358/*.

To date, States have made progress in developing and implementing outcome systems for their Part C early intervention and Part B preschool programs. However, States continue to need support in developing, implementing, and evaluating high quality outcome systems that produce valid, reliable, and accurate data. Additional work is needed to ensure that stakeholders, including administrators, service providers, policymakers, and families, understand the child and family outcomes and how to accurately measure these outcomes. Additionally, States continue to need support in: (a) Developing quality assurance processes to ensure that service providers are trained in collecting and reporting child outcome data and verifying the accuracy of that data; (b) analyzing and using child and family outcome data for program improvement at both the State and local levels; and (c) ensuring that the Part C early intervention and Part B preschool outcome systems are included in discussions as States plan accountability systems for other early care and education programs.

Priority: The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a Technical Assistance Center on Outcomes for Infants, Toddlers, and Preschool Children With Disabilities (Center) that will provide national leadership to assist States with the implementation of high-quality outcome systems for early intervention and preschool special education programs.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

Note: The following Web site provides more information on logic models and lists multiple online resources: *http://www.cdc.gov/eval/resources.htm*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for a summative evaluation to be conducted by an independent third party with experience in conducting evaluations;

(e) A budget for attendance at the following:

(1) A one and one half day kick-off meeting to be held in Washington, DC within four weeks after receipt of the award, and an annual planning meeting held in Washington, DC with the OSEP Project Officer during each subsequent year of the project period.

(2) A three-day Project Directors' Conference in Washington, DC during each year of the project period.

(3) A four-day Technical Assistance and Dissemination Conference in Washington, DC during each year of the project period.

(4) One two-day trip annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(f) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP Project Officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

Project Activities. To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

Knowledge Development Activities. (a) Identify and document evidence-based approaches for measuring functional child outcomes.

(b) Identify and document evidence-based approaches for measuring family outcomes.

(c) In the first three months of the project period, identify a minimum of four States to partner with to develop a high-quality outcome system framework. Each partnering State must have commitments from its Part C early intervention and Part B preschool programs to participate in the activities of the Center. Additionally, the partnering States must be diverse with regard to the assessment approaches they utilize. Factors for consideration in selecting these States could include the demographic and geographic characteristics of each State, the history of outcome data collection and analysis in each State, and the professional development activities in each State that have focused on early childhood outcomes. The Center must obtain approval from OSEP on the final selection of partnering States.

Note: To fulfill the requirements of paragraph (b) of the *Application Requirements* of this priority, applicants must describe the methods and criteria for recruiting and selecting States for this activity in their application.

(d) In the first two years of the project period, partner with the States identified in paragraph (c) of this section to develop, implement, and evaluate a high-quality outcome system framework for Part C early intervention and Part B preschool programs. In developing this framework, the Center must work with the partner States to describe and document the known components of high-quality State and local level outcome systems and to identify, describe, and document any additional components that make up high-quality State and local level outcome systems. The known components must include, but are not limited to, valid and reliable assessment approaches, a coordinated data system, systematic data reporting mechanisms, comprehensive data analysis (including the interpretation and use of data), ongoing professional development, and continuous evaluation of the outcome systems. Through this work, the Center must develop exemplars, tools, and guidance that States (in addition to those partnering with the Center) can use to implement the framework for high-quality State and local level outcome systems within their unique settings.

Technical Assistance and Dissemination Activities. (a) Work directly with States to increase their capacity to develop and maintain high-quality outcome systems. The Center must facilitate the development of State consortia or regional technical assistance (TA) networks to maximize the number of States the Center reaches. In the third, fourth, and fifth years of the

project period, the Center must provide TA to States on implementing the high-quality outcome system framework developed in the first and second years of the project period.

(b) Develop and coordinate a national TA network comprised of a cadre of experts that the Center will use to provide TA to States to assist them in improving their capacity to collect, report, and use outcome data. The topics that this national TA network may focus on in their work with States include, but are not limited to, developing quality assurance processes, analyzing and using child and family outcome data for program improvement purposes, ensuring that the Part C early intervention and Part B preschool outcome systems are included in discussions as States plan accountability systems for other early care and education programs, and assisting States in meeting State and Federal outcome data reporting requirements.

(c) Provide a continuum of general TA and dissemination activities (*e.g.*, managing Web sites, listservs, and communities of practice; and holding conferences and training institutes) on evidence-based practices that promote outcome measurement and data collection to State educational agencies (SEAs), local educational agencies (LEAs), State Part C lead agencies, local Part C programs, parents of young children with disabilities, educators, service providers, members of professional organizations and advocacy groups, researchers, and other appropriate stakeholders. The Center's general TA must focus on helping these stakeholders understand the child and family outcomes and how to accurately measure them.

(d) Maintain a Web site that meets a government or industry-recognized standard for accessibility and that links to the Web site operated by the Technical Assistance Coordination Center (TACC), which OSEP intends to fund in FY 2008.

(e) Prepare and disseminate reports, documents, and other materials on child and family outcomes, outcome measurement, data collection and utilization, and related topics as requested by OSEP for specific audiences including SEAs, LEAs, State Part C lead agencies, local Part C programs, parents of young children with disabilities, educators, service providers, members of professional organizations and advocacy groups, researchers, and other appropriate stakeholders.

In consultation with the OSEP Project Officer, make selected reports, documents, and other materials available for SEAs, LEAs, State lead agencies, local Part C programs, parents of young children with disabilities, educators, service providers, members of professional organizations and advocacy groups, and researchers, and others, as appropriate, in both English and Spanish.

(f) Host an annual early childhood outcomes TA meeting in Washington, DC for State-level Part C early intervention and Part B preschool staff who are responsible for collecting, reporting, and using child and family outcome data.

Leadership and Coordination Activities. (a) Develop and implement strategies for ongoing stakeholder involvement in the work of the Center, including SEAs, LEAs, State Part C lead agencies, local Part C programs, parents of young children with disabilities, educators, service providers, members of professional organizations and advocacy groups, researchers, and others as appropriate.

(b) On an annual basis, compile and share data on States' APRs and updated SPPs for IDEA Part B indicator 7 (preschool child outcomes) and Part C indicator 3 (child outcomes) and indicator 4 (family outcomes) by—

(1) Reviewing relevant sections of each State's APR and updated SPP and summarizing the data on these indicators;

(2) Developing a summary report for each indicator that includes information about States' progress in meeting targets for the indicators, as well as any revisions made to States' monitoring and data systems, measurement systems, or improvement strategies;

(3) Providing a summary report for each indicator to OSEP in a timely manner and participating in OSEP-requested teleconferences to discuss the findings of the summary reports; and

(4) Providing recommendations to OSEP on the most meaningful and useful way to aggregate and analyze the child and family outcome data at the national level.

(More information on Part B indicator 7 and Part C indicators 3 and 4 is available at: *http://www.rrfcnetwork.org/content/view/409/47/*)

(c) Establish and maintain an advisory committee to review the activities and outcomes of the Center and provide programmatic support and advice throughout the project period. At a minimum, the advisory committee must meet on an annual basis in Washington, DC, and include representatives from SEAs, LEAs, State Part C lead agencies, and local Part C programs; individuals with disabilities; parents of children with disabilities, including parents of young children with disabilities; educators; service providers; members of professional organizations and advocacy groups; researchers; and other appropriate stakeholders. The Center must submit the names of proposed members of the advisory committee to OSEP for approval within eight weeks after receipt of the award.

(d) Establish and maintain a technical work group (TWG) made up of experts in early childhood assessment and accountability, and family outcome assessment to ensure that the highest standards of scientific rigor are maintained in the Center's work. The Center must convene the TWG at least once a year (via teleconference, in person, video conference, or other method). The Center must submit the names of proposed TWG members to OSEP for approval within eight weeks after receipt of the award.

(e) Communicate and collaborate, on an ongoing basis, with OSEP-funded projects, including the National Early Childhood Technical Assistance Center, Regional Resource Centers, Parent Training and Information Centers, the Center for Early Literacy Learning, the Technical Assistance Center for Social Emotional Intervention, the National Early Childhood Training Enhancement Center, and the Data Accountability Center. This collaboration could include the joint development of products, the coordination of TA services, and the planning and carrying out of TA meetings and events.

(f) Collaborate and communicate with other national early childhood accountability and assessment initiatives.

(g) Participate in, organize, or facilitate, as appropriate, OSEP communities of practice (*http://www.tacommunities.org/*) that are aligned with the Center's objectives in order to support discussions and collaboration among key stakeholders.

(h) Prior to developing any new product, whether paper or electronic, submit to the OSEP Project Officer and, as determined in consultation with the OSEP Project Officer, the Proposed Product Advisory Board at OSEP's TACC for approval, a proposal describing the content and purpose of the product.

(i) Coordinate with the National Dissemination Center for Individuals with Disabilities, which OSEP intends to fund in FY 2008, to develop an efficient and high quality dissemination strategy that reaches broad audiences. The Center must report to the OSEP

Project Officer the outcomes of these coordination efforts.

(j) Contribute, on an ongoing basis, updated information on the Center's services to OSEP's Technical Assistance and Dissemination Matrix (*http://matrix.rrfcnetwork.org/*), which provides current information on Department-funded TA services to a range of stakeholders.

(k) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations and e-mail communication.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendations of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC that will be held during the last half of the second year of the project period. The Center must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The quality, relevance, and usefulness of the Center's activities and products and the degree to which the Center's activities and products have contributed to changed practice and improved outcome systems.

Absolute Priority 2—National Dropout Prevention Center for Students With Disabilities (84.326W)

Background: Completing high school is an indicator not only of individual student accomplishment but also of a student's potential future economic success. Research has shown that students who do not complete high school are more likely to experience negative outcomes, such as unemployment, underemployment, poverty, and incarceration. Nationally, individuals who drop out of high school are 72 percent more likely to be unemployed and earn 27 percent less than high school graduates (U.S. Department of Labor, 2005).

Students with disabilities are particularly at risk of dropping out of school. Studies estimate that the dropout rate among students with disabilities may be almost double that of students without disabilities (Capital Publications, 1997; U.S. Department of Education, 2007; U.S. Department of Education, 2007b). Students with disabilities who drop out of high school have poorer outcomes than their peers with disabilities who complete school. The National Longitudinal Transition Study-2 (NLTS2) reported that 4 out of 10 youth with disabilities who completed high school participated in a postsecondary program; in comparison, fewer than 1 out of 10 youth with disabilities who dropped out of high school participated in a postsecondary program (Wagner, Newman, Cameto, & Levine, 2005).

Dropout data reported by States indicate that from the 1993–1994 school year through the 2005–2006 school year the percentage of students with disabilities exiting school by dropping out decreased from 45 percent to 26 percent (U.S. Department of Education, 2007b). While the dropout rate has decreased over time, the rate for the 2005–2006 school year represents over 104,000 students with disabilities who exited school by dropping out (U.S. Department of Education, 2007b).

This priority builds on OSEP's past investments to decrease the dropout rate and increase the school completion rate for eligible students with disabilities. OSEP funded the National Dropout Prevention Center for Students with Disabilities (NDPC–SD) in 2003 to learn more about evidence-based practices in dropout prevention and to support State educational agencies (SEAs) in their efforts to assist local educational agencies (LEAs) implement these practices. The NDPC–SD worked with SEAs to address the dropout prevention, re-entry, and school completion issues. (For further information on the work of the NDPC–SD, go to *http://www.ndpc-sd.org*). A new center is needed to continue to address these issues, and, in addition, assist SEAs to meet State goals in their State Performance Plan (SPP) and Annual Performance Report (APR) indicators related to reducing the dropout rate and increasing school completion.

Priority: The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a National Dropout Prevention Center for Students with Disabilities (Center) that will provide States and LEAs with technical assistance (TA) on implementing and evaluating effective comprehensive dropout prevention, re-entry, and school completion models and practices for students with disabilities; developing and improving data collection systems to track students at risk of dropping out; and designing training activities for policy makers, administrators, and practitioners that will help them support efforts to improve dropout prevention, re-entry, and school completion for students with disabilities.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. The project funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provide a framework for both the formative and summative evaluations of the project;

Note: The following Web site provides more information on logic models and lists multiple online resources: *http://www.cdc.gov/eval/resources.htm*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for attendance at the following:

(1) A one and one half day kick-off meeting to be held in Washington, DC within four weeks after receipt of the award, and a one day annual planning meeting held in Washington, DC with the OSEP Project Officer during each subsequent year of the project period.

(2) A three-day Project Directors' Conference in Washington, DC during each year of the project period.

(3) A four-day Technical Assistance and Dissemination Conference in Washington, DC during each year of the project period.

(4) Four two-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings as requested by OSEP; and

(e) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP Project Officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

Project Activities. To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

Knowledge Development Activities. (a) Conduct literature reviews and build on previous literature reviews to identify the critical components of effective and promising models and practices that have been shown to improve outcomes in dropout prevention, re-entry, and school completion.

(b) Collaborate with other technical assistance providers funded by the Department and other Federal agencies to identify strategies for incorporating dropout prevention, re-entry, and school completion models and practices for students with disabilities into broader school improvement efforts. For example, the Department's National High School Center, in its technical assistance to Regional Comprehensive Centers and States, incorporates strategies related to dropout prevention, re-entry, and school completion for students with disabilities as an approach to creating and maintaining excellent high schools. For further information on the work of the High School Center, go to *http://www.betterhighschools.org.*

Technical Assistance and Dissemination Activities. (a) Provide TA to States and LEAs to increase their capacity to design and implement effective dropout prevention, re-entry, and school completion models and practices. The TA must be focused on helping States and LEAs implement the critical components of high quality dropout prevention, re-entry, and school completion models and practices identified through research and literature reviews.

(b) Work with States and LEAs to develop training activities for policy makers, administrators, and practitioners that will help them support effective and promising models and practices to improve dropout prevention, re-entry, and school completion for students with disabilities.

(c) Host an annual national forum in Washington, DC for researchers, policymakers, administrators, practitioners, and other appropriate stakeholders to exchange information on implementing evidence-based dropout prevention, re-entry, and school completion models and practices; establish interagency networks to support the implementation of these models and practices; and develop effective data systems that collect and use data for the purpose of identifying students with disabilities that are at risk of dropping out.

(d) Provide a continuum of general TA and dissemination activities (e.g., managing Web sites, listservs, and communities of practice; and holding conferences and training institutes) on evidence-based practices that promote effective dropout prevention, re-entry, and school completion.

(e) Maintain a Web site that meets a government or industry-recognized standard for accessibility and that links to the Web site operated by the Technical Assistance Coordination Center (TACC), which OSEP intends to fund in FY 2008.

(f) Prepare and disseminate reports, documents, and other materials on dropout prevention, re-entry, and school completion practices and programs, and related topics, as requested by OSEP, for specific audiences including families, practitioners, administrators, policymakers, and researchers. To reach the widest audience possible, dissemination strategies must involve collaboration with other TA providers, organizations, and researchers, as well as the National Dissemination Center for Individuals with Disabilities (Dissemination Center), as described in paragraph (f) in the *Leadership and Coordination Activities* section of this priority. In consultation with the OSEP Project Officer, make selected reports, documents, and other materials available for families, practitioners, administrators, policy makers, and researchers in both English and Spanish.

(g) Develop materials and guidance for States and provide targeted TA related to the performance and compliance indicators on their APRs and SPPs, as requested by OSEP.

Leadership and Coordination Activities. (a) Compile and share data on States' APRs and updated SPPs for IDEA Part B indicator 1 (Graduation) and indicator 2 (Dropout) by—

(1) Reviewing relevant sections of each State's APR and updated SPP and summarizing the data on these indicators;

(2) Developing a summary report for each indicator that includes information about States' progress in meeting targets for the indicators, as well as any revisions made to States' monitoring and data systems, measurement systems, or improvement strategies; and

(3) Providing a summary report for each indicator to OSEP in a timely manner and participating in OSEP-requested teleconferences to discuss the findings of the summary reports.

(More information on Part B indicator 1 and indicator 2 is available at: *http://www.rrfcnetwork.org/content/view/409/47/*).

(b) Establish and maintain an advisory committee to review the activities and outcomes of the Center and provide programmatic support and advice throughout the project period. At a minimum, the advisory committee must meet on an annual basis in Washington, DC, and consist of family members of children with disabilities, students, policy makers, service providers, business and industry representatives, researchers, administrators, advocates, and other appropriate stakeholders. The Center must submit the names of proposed members of the advisory committee to OSEP for approval within eight weeks after receipt of the award.

(c) Communicate and collaborate, on an ongoing basis, with OSEP-funded projects including the National Secondary Transition Technical Assistance Center, the National Postsecondary Outcomes Center, the National High School Center, the Regional Resource Centers, and the National and Regional Parent Technical Assistance Centers. This collaboration could include the joint development of products, the coordination of TA services, and the planning and carrying out of TA meetings and events.

(d) Participate in, organize, or facilitate, as appropriate, OSEP communities of practice (*http://www.tacommunities.org/*) that are aligned with the Center's objectives as a way to support discussions and collaboration among key stakeholders.

(e) Prior to developing any new product, whether paper or electronic, submit to the OSEP Project Officer and, as determined in consultation with the OSEP Project Officer, the Proposed Product Advisory Board at OSEP's TACC for approval, a proposal describing the content and purpose of the product.

(f) Coordinate with the Dissemination Center, which OSEP intends to fund in FY 2008, to develop an efficient and high-quality dissemination strategy that reaches broad audiences. The Center must report to the OSEP Project Officer the outcomes of these coordination efforts.

(g) Contribute, on an ongoing basis, updated information on the Center's services to OSEP's Technical Assistance and Dissemination Matrix (*http://matrix.rrfcnetwork.org/*), which provides current information on Department-funded TA services to a range of stakeholders.

(h) Conduct a summative evaluation of the Center in collaboration with the OSEP-funded Center to Improve Project Performance (CIPP) as described in the following paragraphs. This summative evaluation must examine the outcomes or impact of the Center's activities in order to assess the effectiveness of those activities.

Note: The major tasks of CIPP would be to guide, coordinate, and oversee the summative evaluations conducted by selected Technical Assistance, Personnel Development, Parent Training and Information Center, and Technology projects that individually receive $500,000 or more in funding from OSEP annually. The efforts of CIPP are expected to enhance individual project evaluations by providing expert and unbiased assistance in designing evaluations, conducting analyses, and interpreting data.

To fulfill the requirements of the summative evaluation to be conducted under the guidance of CIPP and with the approval of the OSEP Project Officer, the Center must—

(1) Hire or designate, with the approval of the OSEP Project Officer, a project liaison staff person with sufficient dedicated time, evaluation experience, and knowledge of the Center to work with CIPP on the following tasks: (i) Planning for the Center's summative evaluation (e.g., selecting evaluation questions, developing a timeline for the evaluation, locating sources of relevant data, and refining the logic model used for the evaluation), (ii) developing the summative evaluation design and instrumentation (e.g., determining quantitative or qualitative data collection strategies, selecting respondent samples, and pilot testing instruments), (iii) coordinating the evaluation timeline with the implementation of the Center's activities, (iv) collecting summative data, and (v) writing reports of summative evaluation findings;

(2) Cooperate with CIPP staff in order to accomplish the tasks described in paragraph (1) of this section; and

(3) Dedicate $40,000 of the annual budget request for this project to cover the costs of carrying out the tasks described in paragraphs (1) and (2) of this section, implementing the Center's formative evaluation, and traveling to Washington, DC in the second year of the project period for the Center's review for continued funding.

(i) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations and e-mail communication.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC that will be held during the last half of the second year of the project period;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The quality, relevance, and usefulness of the Center's activities and products and the degree to which the Center's activities and products have contributed to changed practice in dropout prevention and re-entry and school completion rates.

References:

Capital Publications. (1997). Special education dropout rate remains stagnant. *Special Education Law Reporter, 23(1)*, 1–2.

U.S. Department of Education, National Center for Educational Statistics. (2007). Percentage of high school dropouts among persons 16 through 24 years old. *Digest of Education Statistics*. Retrieved May 23, 2008 from *http://nces.ed.gov/programs/digest/d07/tables/dt07_105.asp*

U.S. Department of Education. (2007b). *27th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act*. Washington, DC: Author.

U.S. Department of Education. (2007b). *Children with Disabilities Exiting Special Education, 2005–2006*. Washington, DC: Author.

U.S. Department of Labor. (2005). *Educational resources: So you're thinking of dropping out of school*. Downloaded May 5, 2005 from *http://www.dol.gov/asp/fibre/dropout.htm*.

Wagner, M., Newman, L., Cameto, R., & Levine, P. (2005). Changes over time in the early postschool outcomes of youth with disabilities. A report of findings from the National Longitudinal Transition Study (NLTS) and the National Longitudinal Transition Study-2 (NLTS2).Menlo Park, CA: SRI International.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of the IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1463 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $1,500,000. Please refer to the ''Estimated Available Funds'' column of the chart in this section for the estimated dollar amounts for individual competitions.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Awards: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—TECHNICAL ASSISTANCE AND DISSEMINATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES—APPLICATION NOTICE FOR FISCAL YEAR 2008

CFDA number and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated available funds	Estimated average size of awards	Maximum award * (per year)	Estimated number of awards	Project period	Contact person
84.326L—Technical Assistance Center on Outcomes for Infants, Toddlers & Preschool Children with Disabilities.	June 23, 2008.	July 23, 2008.	September 22, 2008.	$800,000	$800,000	* $800,000	1	Up to 60 months.	Jennifer Tschantz (202) 245–7556 Rm 4057.
84.326W—National Dropout Center for Students with Disabilities.	June 23, 2008.	July 23, 2008.	September 22, 2008.	700,000	700,000	* 700,000	1	Up to 60 months.	Selete Avoke (202) 245–7260 Rm 4121.

* We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the FEDERAL REGISTER.

The Assistant Secretary may use the priorities in this notice for competitions in FY 2009 and later years.

Note: The Department of Education is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this program must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package*: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify the competition to which you want to apply, as follows: CFDA Number 84.326L or 84.326W.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission*: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for each competition announced in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages for each absolute priority, using the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the two-page abstract, the resumes, the bibliography, the references, or the letters of support. The page limit, however, does apply to the application narrative in Part III.

We will reject your application if you exceed the page limit; or if you use other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: See chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal

Programs under Executive Order 12372 is in the application package for each of the competitions announced in this notice.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program, CFDA Numbers 84.326L and 84.326W, announced in this notice are included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities program competitions—CFDA numbers 84.326L and 84.326W at *http://www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.326, not 84.326L). Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date.

We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for the competition to which you are applying to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://eGrants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see*http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC, time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC, time, on

the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC, time, on the application deadline date.

The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326L or 84.326W), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.326L or 84.326W),7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326L or 84.326W), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application packages for each competition announced in this notice.

2. *Peer Review:* In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the Applicable Regulations section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. These measures focus on: The extent to which projects provide high-quality products and services, the relevance of project products and services to

educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

The grantee will be required to provide information related to these measures in annual reports to the Department.

The grantee also will be required to report information on the project's performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: See chart in the *Award Information* section of this notice for the individual contact person's name, room number and telephone number. You can write to the contact at the following address: U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza (PCP), Washington, DC 20202–2550. If you use a TDD, call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: 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) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: 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 on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 16, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–14123 Filed 6–20–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–69–000]

New England Conference of Public Utilities Commissioners, Inc.,Complainants v. Bangor Hydro-Electric Company, Central Maine Power Company, National Grid, USA, NSTAR Electric & Gas Corporation, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company, Respondents; Notice of Complaint

June 16, 2008.

Take notice that on June 12, 2008, the New England Conference of Public Utilities Commissioners, Inc. (NECPUC) filed a complaint against Bangor Hydro-Electric Company, Central Maine Power Company, National Grid, USA, NSTAR Electric & Gas Corporation, Northeast Utilities Service Company, The United Illuminating Company, and Vermont Electric Power Company. Among other things, NECPUC states that it seeks to limit application of the return on equity cost adder for certain qualified projects.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of Respondent's answer, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 2, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–14065 Filed 6–20–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

June 16, 2008.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the

document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Prohibited

Docket No.	Date received	Presenter or requester
1. CP06–365–000; CP06–366–000	6–6–08	Chris Robertson.
2. CP07–208–000	5–6–08	Harold P. Quinn, Jr.
3. CP07–444–000; CP07–441–000	6–6–08	Chris Robertson.
4. CP08–6–000; CP08–9–000; PR08–1–000	5–22–08	G. Steven Farris.
5. CP08–6–000; CP08–9–000; PR08–1–000	6–6–08	Jerry R. Simmons.
6. CP08–6–000; CP08–9–000; PR08–1–000	6–10–08	Adam Haynes.

Exempt

Docket No.	Date received	Presenter or requester
1. CP07–62–000	6–10–08	Hon. Barbara A. Mikulski.
2. CP08–100–000	5–29–08	Hon. John A. Boehner.
3. CP08–208–000	5–28–08	Hon. Jon A. Husted.
4. CP08–6–000; CP08–9–000; PR08–1–000	6–12–08	Hon. John Culberson, Hon. Kevin Brady, Hon. Michael C. Burgess.
5. Project No. 10856–000	6–16–08	Jean Potvin.
6. Project No. 10856–000	6–16–08	Jon Cofrancesco.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–14064 Filed 6–20–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8683–7]

Science Advisory Board Staff Office; EPA Clean Air Scientific Advisory Committee (CASAC); Notification of Public Advisory Committee Meetings (Teleconferences) of the CASAC Ambient Air Monitoring & Methods (AAMM) Subcommittee and the CASAC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) ScienceAdvisory Board (SAB) Staff Office announces: A public advisory teleconference of the Ambient Air Monitoring & Methods (AAMM) Subcommittee (Subcommittee) of the Clean Air Scientific Advisory Committee (CASAC) to conduct a peer review of the proposed Federal Reference Method (FRM) for the measurement of lead (Pb) in particulate matter less than 10 micrometers in diameter (PM_{10}) in ambient air, and a consultation concerning the need and approaches for the development of a low-volume ambient air monitor for Pb in total suspended particulate (TSP) FRM or Federal Equivalent Method (FEM); and a public teleconference of the chartered CASAC to review and approve the Subcommittee's report from its review of the Pb-PM_{10} FRM.

DATES: The Subcommittee will hold a public teleconference on Monday, July 14, 2008, from 1 p.m. to 5 p.m. (Eastern Time). The chartered CASAC will hold a public teleconference on Monday, August 18, 2008, from 1 p.m. to 4 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in numbers and access codes; submit a written or brief oral statement (three minutes or less); or receive further information concerning these teleconference meetings, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO). Mr. Butterfield may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail: 202–343–9994; fax: 202–233–0643; or e-mail at *butterfield.fred@epa.gov.* General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The CASAC, which is composed of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act(CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. The CASAC provides advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and the National Ambient Air Quality Standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB Staff Office established the CASAC AAMM Subcommittee in 2004 as a standing subcommittee to provide the EPA Administrator, through the CASAC, with advice and recommendations, as necessary, on topical areas related to ambient air monitoring, methods and networks. The CASAC and the Subcommittee comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including lead. EPA initiated its current review of the NAAQS for lead in early 2005. In March 2008, the Subcommittee held a public teleconference meeting to conduct a consultation on technical issues relating to the ambient air monitoring of Pb-PM_{10}, including options for the Lead NAAQS indicator, a draft Federal Reference Method (FRM) for Pb-PM_{10}, lead monitoring network design, and sampling frequency. The CASAC's report to the EPA Administrator concerning this consultation (EPA–CASAC–08–010, dated April 14, 2008) is available on the EPA Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/733B01113F8000AA8525742C005C478D/$File/EPA-CASAC-08-010-unsigned.pdf.*

On May 20, 2008, EPA published in the **Federal Register** (FR 73 29184) its proposed rule for the revision of the NAAQS for Lead and associate lead-monitoring requirements. The proposed revisions included a proposed FRM for the measurement of Pb-PM_{10}. In addition, the preamble requested public comments on the need and approaches for the development of a low-volume ambient air monitor for Pb in total suspended particulate (TSP) FRM or Federal Equivalent Method (FEM). The purpose of the July 14, 2008 public teleconference is for the Subcommittee to conduct a technical peer review on the proposed FRM for Pb-PM_{10} and to provide a consultation on the need for and approaches for development of a low-volume Pb-TSP FRM or FEM. The purpose of the August 18, 2008 public teleconference is for the chartered CASAC to review and approve the Subcommittee's draft report from its review of the Pb-PM_{10} FRM.

Technical Contacts: Any technical questions concerning the Agency's proposed FRM can be directed to Mr. Kevin Cavender, OAQPS, at phone: 919–541–2364, or e-mail *cavender.kevin@epa.gov;* or to Mr. Lewis Weinstock, OAQPS, at phone: 919–541–3661, or e-mail *weinstock.lewis@epa.gov.*

Availability of Meeting Materials: The draft FRM for Pb-PM_{10} that will be the subject of the peer review is contained in the **Federal Register** notice for the proposed rule (May 20, 2008, FR 73 29184). The Agency will post additional documents to be discussed during this consultation on the EPA Technology Transfer Network (TTN) Web page for the Lead NAAQS at *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_cr_td.html.* The meeting agenda and any other materials for the CASAC teleconferences will be posted on the EPA Web site at *http://www.epa.gov/casac* in advance of these teleconferences.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the CASAC AAMM Subcommittee or the CASAC to consider on the topics included in this advisory activity and/or the group conducting the activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. To be placed on the list of public speakers for the Subcommittee's July 14, 2008 teleconference meeting, interested parties should contact Mr. Butterfield, DFO, in writing (preferably via e-mail), by July 7, 2008, at the contact information noted above. To be placed on the public speaker's list for the CASAC's August 18, 2008 teleconference meeting, interested parties should contact Mr. Butterfield by August 11, 2008. *Written Statements:* Written statements for the Subcommittee's July 14, 2008 teleconference meeting should be received in the SAB Staff Office by July 10, 2008, so that the information may be made available to the Subcommittee for its consideration prior to this teleconference. For the teleconference meeting of the chartered CASAC on August 18, 2008, statements should be received in the SAB Staff Office by August 14, 2008. Written statements should be supplied to the DFO electronically via e-mail (acceptable file formats: Adobe PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Butterfield at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 17, 2008.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–14107 Filed 6–20–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

June 16, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 23, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your comments to Nicholas A. Fraser, Office of Management and Budget (e-mail address: *nfraser@omb.eop.gov*), and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov*). Include in the e-mails the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below or, if there is no OMB control number, the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or at

(202) 418–0217. To view or obtain a copy of an information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of the ICR you want to view (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0734.

Title: Sections 53.209, 53.211 and 53.213—Accounting Safeguards; and Sections 260 and 271–276 of the Communications Act of 1934, as amended.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 3 respondents; 1,551 responses.

Estimated Time per Response: 0.5—4,593 hours.

Obligation to Respond: Required to obtain or retain a benefit. *See* Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, *et al.*, WC Docket No. 02–112, 22 FCC Rcd 16440 (2007).

Frequency of Response: On occasion and biennial reporting requirements; third party disclosure requirement; and recordkeeping requirement.

Total Annual Burden: 72,495 hours.

Total Annual Cost: $1,500,000.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: A Bell Operating Company (BOC) may choose from among three regulatory regimes in its provision of in-region, interstate, interLATA (Local Access and Transport Area) telecommunications services. One of these regimes is the regime set forth in section 272 of the Communications Act and the Commission's implementing rules, 47 CFR section 272. Under this regime, a BOC and its section 272 affiliate may not jointly own transmission and switching equipment. The separate section 272 affiliate must maintain separate books of account and have separate officers and directors. The separate section 272 affiliate may not obtain credit under arrangements that would permit the creditor to look to the assets of the BOC. The section 272 affiliate must conduct all transactions with the BOC on an arm's length basis, pursuant to the Commission's affiliate transaction rules, with the terms and conditions of such transactions reduced to writing and available for public inspection on the Internet. Section 272(d) states that companies required to maintain a separate affiliate ''shall obtain and pay for a Federal/State audit every two years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under [section 272(b)].'' These information collection requirements are intended to prevent discrimination, cost misallocation and other anti-competitive conduct by the BOCs.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–14023 Filed 6–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

June 15, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 23, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your comments to Nicholas A. Fraser, Office of Management and Budget (e-mail address: *nfraser@omb.eop.gov*), and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov*). Include in the e-mails the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below or, if there is no OMB control number, the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or at (202) 418–0217. To view or obtain a copy of an information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of the ICR you want to view (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 6,017 respondents; 137,256,125 responses.

Estimated Time per Response: 0.153 minutes.

Frequency of Response: On occasion, biennial, annual, and one time reporting requirements; recordkeeping; and third party disclosure.

Obligation to Respond: Mandatory as required by section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222.

Total Annual Burden: 350,704 hours.

Total Annual Cost: $3,000,000.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. Section 222, establishes a duty of every telecommunications carrier to protect the confidentiality of its customers' CPNI, which includes personally identifiable information derived from a customer's relationship with a provider of communications services. This information collection implements the statutory obligations of section 222. These regulations impose safeguards to protect customers' CPNI against unauthorized access and disclosure. In March 2007, the Commission adopted new rules in the *CPNI Order*, CC Docket No. 96–115 *et al.*, FCC 07–22, which focused on the efforts of providers of communications services to prevent pretexting. These rules required providers of communications services to adopt additional privacy safeguards that, the Commission believes, will sharply limit pretexters' ability to obtain unauthorized access to the type of personal customer information from carriers that the Commission regulates. In addition, in furtherance of the Telephone Records and Privacy Protection Act of 2006, the Commission's rules help ensure that law enforcement will have necessary tools to investigate and enforce prohibitions on illegal access to customer records.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–14118 Filed 6–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

June 17, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 23, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your comments to Nicholas A. Fraser, Office of Management and Budget (e-mail address: *nfraser@omb.eop.gov*), and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov*). Include in the e-mails the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below or, if there is no OMB control number, the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or at (202) 418–0217. To view or obtain a copy of an information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of the ICR you want to view (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1005.

Title: Number Resources Optimization—Phase 3.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit and State, Local or Tribal Government.

Number of Respondents and Responses: 17 respondents; 32 responses.

Estimated Time per Response: 1 to 55 hours.

Frequency of Response: On occasion reporting requirements; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 860 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules.

Needs and Uses: In the Communications Act of 1934, as

amended by the Telecommunications Act of 1996, the Federal Communications Commission (''FCC'' or ''Commission'') was given ''exclusive jurisdiction'' over those portions of the North American Numbering Plan (NANP) that pertain to the United States.'' To ensure that the numbering resources of the NANP continue to be used efficiently, the Commission requires that applications to state commissions from carriers must demonstrate that certain requirements are met before states grant any use of the safety valve mechanisms. It also requires that State commissions seeking to implement service-specific and/or technology-specific area code overlays must request delegated authority to do so. The information collected by the FCC and state commissions will be used to assist these regulatory bodies in their efforts to maximize the efficiency with which numbering resources in the NANP are utilized. The Commission notes that the Reporting Requirements for Federal Cost Recovery information collection requirement was a ''one time'' requirement that expired.* * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–14120 Filed 6–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 17, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. Sections 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before August 22, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, send them to Leslie F. Smith, Federal Communications Commission, Room 1–C216, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0804.

Title: Universal Service—Rural Health Care Program/Rural Health Care Pilot Program.

Form Number(s): FCC Forms 465, 466, 466–A, and 467.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions; and state, local, or tribal governments.

Number of Respondents and Responses: 6,494 respondents; 59,494 responses.

Estimated Time per Response: 0.10–20 hours.

Frequency of Response: Recordkeeping; on occasion, one time, annual, quarterly, and monthly reporting requirements; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 67,467 hours.

Total Annual Cost: $0.00.

Privacy Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: In the Telecommunications Act of 1996 (1996 Act), Congress specifically sought to provide rural health care providers with ''an affordable rate for the services necessary for the provision of telemedicine and instruction relating to such services.'' In 1997, the Commission implemented this statutory directive by adopting the current Rural Health Care support mechanism, which provides universal service support to ensure that rural health care providers pay no more than their urban counterparts for their telecommunications needs and Internet access in the provision of health care services. Despite the Commission's efforts to increase the utility of the Rural Health Care support mechanism, the program has yet to fully achieve the benefits intended by the statute and the Commission. In particular, health care providers continue to lack access to the broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are vital to bringing medical expertise and the advantages of modern health technology to rural areas of the nation. In response, the Commission issued the 2007 Pilot Program Selection Order (WC Docket No. 02–60; FCC 07–198) which selected 69 participants for the universal service Rural Health Care Pilot Program (which was originally established by the Commission in September 2006). These 69 participants are eligible for up to 85 percent of the costs associated with: (1) The construction of state or regional broadband health care networks and with the advanced telecommunications and information services provided over those networks; (2) connecting to Internet2 or National LambdaRail, which are both dedicated nationwide backbones; and (3) connecting to the public Internet. Approximately $417 million in universal service support over three years (or $139 million per funding year) will be available to these participants. To minimize the burden on Pilot Program participants and to streamline the process, the Commission generally uses the same forms as the existing Rural Health Care support mechanism. For example, selected participants, in order to receive support, must submit an FCC Form 465 (seeking bids), FCC Form 466–A (selection of service provider), and FCC Form 467 (notification of service initiation). Due to the unique structure of the Pilot Program, however, in the 2007 Pilot Program Selection Order, the Commission provides guidance regarding how these forms should be completed and additional information is required from selected participants, including proposed network costs worksheets, certifications, letters of agency from each participating health care provider, invoices showing actual incurred costs, and, if applicable, network design studies.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–14133 Filed 6–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 8, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. William E. Arnold, John M. Hubbard, Kellee S. Whitehurst, Betty W. Arnold, and William E. Arnold, as Trustee of the Betty W. Arnold Revocable Trust, all of Williston, Florida, to acquire voting shares of Williston Holding Company, and thereby indirectly acquire voting shares of Perkins State Bank, both of Willston, Florida.

Board of Governors of the Federal Reserve System, June 18, 2008.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. E8–14085 Filed 6–20–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold its sixteenth meeting. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, July 15, 2008, from 8:30 a.m. until 4:30 p.m. and Wednesday, July 16, 2008, from 8:30 a.m. until 4:30 p.m.

ADDRESSES: The Sheraton National Hotel, 900 South Orme Street, Arlington, Virginia 22204. Phone: 703–521–1900.

FOR FURTHER INFORMATION CONTACT: Ivor Pritchard, PhD, Acting Director, Office for Human Research Protections, or Julia Gorey, J.D., Acting Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; 240–453–6900; fax: 240–453–6909; E-mail address: *sachrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On July 15, 2008, SACHRP will receive and discuss a report from the Subcommittee on Inclusion of Individuals with Impaired Decision-Making in Research. The Subcommittee on Inclusion of Individuals with Impaired Decision-Making in Research is charged with developing recommendations for consideration by SACHRP about whether guidance and/or additional regulations are needed for research involving individuals with impaired decision-making capacity. This subcommittee was formed as a result of discussions during the July 31–August 1, 2006 SACHRP meeting. In addition, an invited panel will discuss ethical issues associated with tissue repositories and biological specimens, including questions surrounding community consent, appropriateness and validity of consent for unspecified uses, and appropriate waiver of consent.

On July 16, 2008, the Committee will receive and discuss a report from the Subpart A Subcommittee. The Subpart A Subcommittee is charged with developing recommendations for consideration by SACHRP about the application of Subpart A of 45 CFR part 46 in the current research environment. This subcommittee was established by SACHRP at its October 4–5, 2006 meeting. In addition, SACHRP members will make brief presentations on the problems and issues they see with the present Human Subjects Protection System, followed by a period of discussion.

Public attendance at the meeting is limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact persons. Members of the public will have the opportunity to provide comments on both days of the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed materials distributed to SACHRP members for this scheduled meeting should submit materials to the Acting Executive Director, SACHRP, prior to the close of business Monday, June 30, 2008. Information about SACHRP and the draft meeting agenda will be posted on the SACHRP Web site at: *http://www.hhs.gov/ohrp/sachrp/index.html.*

Dated: June 16, 2008.

Ivor A. Pritchard,

Acting Director, Office for Human Research ProtectionsActing Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. E8–14035 Filed 6–20–08; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–0706]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Program of Cancer Registries Program Evaluation Instrument (NPCR–PEI)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is responsible for administering and monitoring the National Program of Cancer Registries (NPCR). The NPCR provides technical assistance and funding and sets program standards to assure that complete local, state, regional, and national cancer incidence data are available for national and state cancer control and prevention activities and health planning activities. As of 2008, CDC supports 49 population-based central cancer registries (CCR) in 45 states, two territories, the District of Columbia, and the Pacific Islands. The National Cancer Institute supports the operations of CCRs in the five remaining states.

Cancer registries currently submit information about registry operations to CDC on an annual basis via a secure, web-based Annual Program Evaluation Instrument (APEI) (OMB 0920–0706, exp. 12/31/2008). During the next OMB approval period, CDC proposes to change the data collection frequency from annual to every other year, with data collection occurring only in odd-numbered years. This change will reduce burden to respondents. The project title and the instrument will be revised to reflect the change in data collection frequency (from National Program of Cancer Registries Annual Program Evaluation Instrument (NPCR–APEI) to National Program of Cancer Registries Program Evaluation Instrument (NPCR–PEI)).

The Program Evaluation Instrument (NCPR–PEI) includes questions about the following categories of registry operations: (1) Staffing, (2) legislation, (3) administration, (4) reporting completeness, (5) data exchange, (6) data content and format, (7) data quality assurance, (8) data use, (9) collaborative relationships, (10) advanced activities, (11) ''success stories'' that summarize ways in which CCR data are used, and (12) survey feedback. Examples of information that can be obtained from various questions include, but are not limited to: (1) Number of filled full-time staff positions by position responsibility; (2) legislation protecting the confidentiality of CCR data; (3) data quality control activities; (4) data collection activities as they relate to achieving NPCR standards for data completeness; and (5) whether or not registry data are used for comprehensive cancer control programs, needs assessment/program planning, clinical studies, or incidence and mortality estimates.

The NPCR–PEI is needed in order to receive, process, evaluate, aggregate, and disseminate NPCR program information. The information is used by CDC and the NPCR-funded registries to monitor progress toward meeting established program standards, goals, and objectives; to evaluate various attributes of the registries funded by NPCR; and to respond to data inquiries made by CDC and other agencies of the federal government.

CDC requests OMB approval for a period of three years to collect information in the summer of 2009 and the summer of 2011. There are no costs to respondents except their time.

The estimated annualized burden hours are summarized in the table below.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
NPCR Grantees	33	1	1.5	50

Dated: June 13, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–14152 Filed 6–20–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–08BE]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Chronic Hepatitis Cohort Study (CHeCS)—New—National Center for HIV, Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Approximately 3.2 million Americans are chronically infected with hepatitis C virus and 1.25 million Americans are

chronically infected with hepatitis B virus. Each year, there are approximately 8,000–10,000 hepatitis C virus infection related deaths and 3,000–5,000 hepatitis B virus infection related deaths.

Current surveillance activities are not designed to monitor long-term outcomes and merely report diagnosed cases of hepatitis B and hepatitis C virus infections. In order to investigate long-term effects of new therapies for chronic viral hepatitis B and C infections, we need longitudinal observational cohorts of persons chronically infected with hepatitis B and/or C virus. Information from longitudinal cohorts of patients with chronic hepatitis B and C virus infection will provide an understanding of the spectrum and natural history and, the public health impact of chronic hepatitis disease.

The proposed project will establish a longitudinal observational cohort of patients with chronic viral hepatitis in one or more clinical centers. A patient behavior questionnaire will be included with the clinical information that physicians routinely collect when evaluating and examining a patient (*i.e.* during physician-patient interactions). The information linking behaviors with the clinical information from this longitudinal study will enable better care and management of persons with chronic hepatitis B and C virus infections and reduce hepatitis-related mortality.

The total annual burden for this project is expected to be 500 hours. The information to be collected in the patient behavior questionnaire includes demographic data, alcohol or drug use, access to care, quality of life, and adherence to prescribed therapy, which is essential in order to be able to correctly interpret clinical outcomes data. These data will be used to describe the spectrum and natural history of disease associated with chronic hepatitis B and C virus infection, to determine the extent of health burden and mortality related to chronic viral hepatitis, describe the characteristics of persons in care for chronic viral hepatitis infection, describe access to and effectiveness of recommended preventive and therapeutic interventions, and evaluate ongoing risk behaviors and their impact on health outcomes.

Participation in this data collection is voluntary and there is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Patients with chronic hepatitis B or C virus infection	1000	1	30/60	500

Dated: June 13, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–14154 Filed 6–20–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and ControlSpecial Emphasis Panel (SEP): Health Promotion and Disease Prevention Research Centers: FY08 Special Interest Project Competitive Supplements, Program Announcement Number (PA) DP 08–002

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Dates: 8 a.m.–5 p.m., July 9, 2008 (Closed).8 a.m.–5 p.m., July 10, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''Health Promotion and Disease Prevention Research Centers: FY08 Special Interest Project Competitive Supplements, PA DP 08–002.''

Contact Person for More Information: K. Ann Berry, Senior Scientist, CDC, 1600 Clifton Road, NE., Mailstop E20, Atlanta, GA 30333, Telephone (404) 498–2503.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 16, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office,Centers for Disease Control and Prevention.

[FR Doc. E8–14082 Filed 6–20–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Spina Bifida Patient Registry Demonstration Project (U01), Program Announcement Number (PA) DP 08–001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 8 a.m.–5 p.m., July 10, 2008 (Closed).

Place: Grand Hyatt Atlanta, 3300 Peachtree Road, NE., Atlanta, GA 30305, Telephone: (404) 237–1234.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''Spina Bifida Patient Registry Demonstration Project (U01), PA DP 08–001.''

For More Information Contact: Gwendolyn Cattledge, Deputy Associate Director for Science, CDC, 1600 Clifton Road, NE.,

Mailstop F63, Atlanta, GA 30333, Telephone (770) 488–4655.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 16, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–14088 Filed 6–20–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following teleconference meeting:

Name: National Center for Injury Prevention and Control (NCIPC), Initial Review Group (IRG).

Times and Date: 1 p.m.–1:30 p.m., July 11, 2008 (Open).1:30 p.m.–5 p.m., July 11, 2008 (Closed).

Place: Centers for Disease Control and Prevention, Chamblee Campus, Building 106, 4770 Buford Highway, Atlanta, Georgia 30341. Toll Free: 888–793–2154, Participant Passcode: 4424802.

Status: Portions of the meetings will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of individual research grant and cooperative agreement applications submitted in response to Fiscal Year 2008 Requests for Applications related to the following individual research announcement: RFA–EH–08–002, Program to Expand State or Territorial Public Health Laboratory Capacity for Newborn Bloodspot Screening to Include Severe Combined Immune Deficiency (SCID) (U01).

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jane Suen, PhD, M.S., Executive Secretary, NCIPC IRG, CDC, 4770 Buford Highway, NE., M/S F–62, Atlanta, Georgia 30341, telephone 770/488–4281.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 17, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–14077 Filed 6–20–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and ControlInitial Review Group

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following teleconference meeting:

Name: National Center for Injury Prevention and Control (NCIPC) Initial Review Group (IRG).

Times And Date: 1 p.m.–1:30 p.m., July 8, 2008 (Open). 1:30 p.m.–6 p.m., July 8, 2008 (Closed).

Place: The teleconference will originate at CDC, ChambleeCampus, Building 106, 4770 Buford Highway, Atlanta, Georgia 30341. To participate, dial (888) 793–2154, and enter passcode: 4424802.

Status: Portions of the meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of individual research grant and cooperative agreement applications submitted in response to Fiscal Year 2008 Requests for Applications related to the following individual research announcement: ''Elimination of Health Disparities Through Translation Research (R18), Request for Application (RFA) CD08–001 for the National Center for Injury Prevention and Control Applications.''

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jane Suen, PhD, M.S., Executive Secretary, NCIPC IRG, CDC, 4770 Buford Highway, NE., M/S F–62, Atlanta, Georgia 30341, telephone 770/488–4281.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 16, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office,Centers for Disease Control and Prevention.

[FR Doc. E8–14084 Filed 6–20–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and ControlInitial Review Group

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting:

Name: National Center for Injury Prevention and Control (NCIPC) Initial Review Group (IRG).

Times and Date: 9 a.m.–9:30 a.m., July 9, 2008 (Open); 9:30 a.m.–5 p.m., July 9, 2008 (Closed).

Place: Doubletree Hotel Atlanta-Buckhead, 3342 Peachtree Road, NE., Atlanta, Georgia 30326, Telephone: 404–231–1234.

Status: Portions of the meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct

specific injury research that focuses on prevention and control.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of individual research grant and cooperative agreement applications submitted in response to Fiscal Year 2008 Requests for Applications related to the following individual research announcement: ''Elimination of Health Disparities Through Translation Research (R18), Request for Application (RFA) CD08–001 for the National Center for Environmental Health Applications.''

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jane Suen, PhD, M.S., Executive Secretary, NCIPC IRG, CDC, 4770 Buford Highway, NE., M/S F–62, Atlanta, Georgia 30341, telephone 770–488–4281.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 16, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–14158 Filed 6–20–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice Regarding Revisions to the Laboratory Protocol To Measure the Quantity of Nicotine Contained in Smokeless Tobacco Products Manufactured, Imported, or Packaged in the United States

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice and request for public comment.

SUMMARY: The uniform protocol for the analysis of nicotine, total moisture, and pH in smokeless tobacco products, originally published in the **Federal Register** in 1999 (64 FR 14086), ''Notice Regarding Requirement for Annual Submission of the Quantity of Nicotine Contained in Smokeless Tobacco Products Manufactured, Imported, or Packaged in the United States,'' and revised in the **Federal Register** on March 14, 2008 (73 FR 13903), implements the requirement of the Comprehensive Smokeless Tobacco Health Education Act (CSTHEA) of 1986 (15 U.S.C. 4401 *et seq.*, Pub. L. 99–252) that each entity manufacturing, packaging, or importing smokeless tobacco products shall annually provide the Secretary of Health and Human Services (HHS) with a specification of the quantity of nicotine contained in each smokeless tobacco product. CDC is re-publishing the notice published in the **Federal Register** on March 14, 2008 (73 FR 13903) concerning the revision of the protocol for analysis of nicotine in smokeless tobacco products (hereinafter referred to as ''Protocol'') to (1) make a technical change to correct the date when the first report of information under the revised Protocol is due; (2) solicit public comments concerning a change in the Protocol that increased the volume of water in the pH determination from 10 mL to 20 mL, and (3) solicit public comments concerning the addition of the following commercial smokeless tobacco product categories: Dry snuff portion packs, snus, snus portion packs, and pellet or compressed.

The Protocol as published in the **Federal Register** on March 14, 2008 (73 FR 13903), remains in effect with the technical correction to the date described below.

Technical change: The language in the March 14, 2008 notice stated that ''The first report of information is due June 30, 2008, with subsequent submissions due by March 31 of each year.'' The first report date of information should be 2009 so that the sentence correctly reads: ''The first report of information is due June 30, 2009, with subsequent submissions due by March 31 of each year.''

DATES: Written comments concerning the change in the volume of liquid in the pH determination and the addition of four commercial smokeless tobacco product categories must be received on or before July 23, 2008.

ADDRESSES: Comments should be marked ''Comments on Revised Protocol for Analysis of Nicotine'' and mailed to the Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, Attention: Matthew McKenna, M.D., Director, 4770 Buford Highway NE., MS K–50, Atlanta, Georgia 30341–3724. Comments may be e-mailed to: *pir1@cdc.gov*.

FOR FURTHER INFORMATION CONTACT: Matthew McKenna, M.D. Director, Office on Smoking and Health, Telephone: (770) 488–5701.

SUPPLEMENTARY INFORMATION: Several smokeless tobacco product categories have entered the U.S. smokeless tobacco market since the implementation of the protocol in 1999 including snus, low moisture snuff sold in portion pouches, and smokeless tobacco sold in a compressed, pellet form. Some of the new smokeless tobacco product categories differ physically from previous smokeless tobacco categories.

After evaluating information that has recently come to the attention of the Centers for Disease Control and Prevention's Office on Smoking and Health (OSH) regarding low moisture smokeless tobacco products packaged in portion pouches, OSH conducted an independent comparison of pH measurements in a variety of low and high moisture smokeless tobacco products. The results of this comparison, presented in Table 1, indicate that there is an acceptable (less than 2%) level of change in pH values when measurements are taken with 20 mL deionized, distilled water (Condition B) compared to 10 mL of deionized, distilled water (Condition A). Increasing the volume of water in the mixture ensures that the matrix is sufficiently fluid to facilitate ease of measure.

TABLE 1.—SUMMARY OF pH LEVELS FOUND IN SEVEN TYPES OF SMOKELESS TOBACCO PRODUCTS: PLUG; LOOSE LEAF OR SCRAP; TWIST; DRY SNUFF—LOW MOISTURE/NO POUCH; DRY SNUFF—LOW MOISTURE/POUCH; SNUS; AND MOIST SNUFF

Category	Smokeless Tobacco Product	pH [a]							
		Condition A 10 mL [b]			Condition B 20 mL [b]			pH Change	% Change
		Mean [c]		SD [d]	Mean [c]		SD [d]		
Plug	Days O Work Chew	5.06	±	0.02	5.11	±	0.03	0.048	0.95
	Conwood Company's Sun Cured	5.12	±	0.02	5.19	±	0.02	0.067	1.30
	Levi Garrett Plug Chew	5.83	±	0.02	5.91	±	0.03	0.074	1.26
	Taylor's Pride Plug Chew	5.92	±	0.03	5.97	±	0.03	0.052	0.89
Loose Leaf	Beech-Nut Chew	5.56	±	0.01	5.62	±	0.01	0.062	1.11
	Redman Chew	5.93	±	0.01	5.99	±	0.04	0.067	1.12
Twist	Cumberland	5.68	±	0.01	5.79	±	0.02	0.107	1.88
Dry Snuff/No Pouch.	Tube Rose Sweet Scotch Snuff	5.64	±	0.00	5.69	±	0.02	0.051	0.90
	RailRoad Mills Sweet Scotch Snuff	5.91	±	0.02	6.02	±	0.00	0.115	1.95
Dry Snuff/Pouch	Taboka	6.44	±	0.01	6.52	±	0.00	0.081	1.26
	Skoal Dry Cinnamon	6.78	±	0.00	6.83	±	0.01	0.056	0.83
Snus	Camel Snus Original	7.43	±	0.00	7.44	±	0.00	0.010	0.13
Moist Snuff	Renegades Wintergreen	6.45	±	0.03	6.53	±	0.03	0.079	1.22
	Copenhagen Regular	7.61	±	0.02	7.52	±	0.01	−0.090	−1.18
	Kodiak Ice Long Cut Regular	8.13	±	0.04	8.13	±	0.01	0.001	0.01

[a] The standard protocol published in the FEDERAL REGISTER to measure pH in smokeless tobacco products is as follows: 10 mL of deionized distilled water is added to 2.00 grams of smokeless tobacco product measuring pH at 5, 15, 30 and 60 minute intervals. Recently introduced low moisture dry snuff smokeless tobacco products packed in pouches had a thick paste-like consistency when prepared in 10 mL of deionized distilled water. When 2.00 grams [e] of low moisture dry snuff smokeless tobacco products packed in pouches were prepared in 20 mL of deionized distilled water, the sample remains suspended in liquid and is well mixed.
[b] n = 1.
[c] Average pH from four measured intervals.
[d] Standard Deviation.
[e] Accurately weighed: 2.000 ± .0005 grams.

OSH has determined that these revisions will improve the applicability of the protocol and provide guidance to reporting entities and other interested parties for testing of all currently marketed categories of smokeless tobacco. The change in the volume of liquid in the pH determination facilitates the ease of measure of smokeless tobacco pH for all currently marketed smokeless tobacco categories (i.e., plug, twist, moist snuff, dry snuff, snus, loose leaf, chew, moist snuff in portion pouches, smokeless tobacco compressed into a pellet, and dry snuff in portion pouches).

Collection of Information

This proposed amendment does not call for any new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Dated: June 13, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

Revised Protocol for Analysis of Nicotine, Total Moisture, and pH in Smokeless Tobacco Products

I. Requirements [1 2]

A. Reagents [3]

1. Sodium hydroxide (NaOH), 2N.
2. Methyl t-butyl ether (MTBE).
3. (-) -Nicotine (Fluka 72290) >99% purity.[4 5]
4. Quinoline (Aldrich).
5. Standard pH buffers; 4.01, 7.00, and 10.00.
6. Deionized distilled water.

B. Glassware and Supplies

1. Volumetric flasks, class A.
2. Culture tubes, 25 mm x 200 mm, with Teflon-lined screw caps.
3. Pasteur pipettes.
4. Repipettors (10 mL and 50 mL).
5. Linear shaker (configured to hold tubes in horizontal position).[6 7]
6. Weighing dishes, aluminum.
7. Teflon-coated magnetic stirring bars.
8. Polypropylene containers, 50 mL.

C. Instrumentation

1. Robot Coupe Model RSI 2V Scientific Batch Processor.
2. Capillary gas chromatograph, Hewlett Packard, Model 6890, with split/splitless injector capability, flame ionization detector, and a capillary column (Hewlett Packard HP–5, Crosslinked 5% PH ME Siloxane, 30 m length × 0.32 mm ID, film thickness 0.25 or 0.52 μm).
3. Orion Model EA 940 pH meter equipped with Orion 8103 Ross combination pH electrode.

D. Additional Equipment

Forced-air oven, Fisher Isotemp®, regulated to 99 ± 1.0 °C. Suggested dimensions: 18 × 18 × 20 inches.

E. Chromatographic Conditions [8 9]

1. Detector temperature: 250 °C.
2. Injector temperature: 250 °C.
3. Flow rate at 100 °C—1.7 mL/min; with split ratio of 40:1.[10]
4. Injection volume: 2 μl.
5. Column conditions: 110–185 °C at 10 °C min^{-1}; 185–240 °C at 6 °C min^{-1}, hold at final temperature for 10 min.

F. Sample Preparation [11]

There are ten different categories of commercial smokeless tobacco products:

1. Dry snuff;

2. Moist (wet) snuff;
3. Moist (wet) snuff portion packs;
4. Plug;
5. Twist;
6. Loose leaf;
7. Dry snuff portion packs;
8. Snus;
9. Snus portion packs; and
10. Pellet or Compressed.

Because of their physical characteristics, some of the ten product categories must be ground (whole or in part) before nicotine, total moisture, and pH analyses can be conducted. The objective of grinding the samples is to obtain a homogeneous sample with particles measuring approximately 4 mm. Grinding to achieve this particle size should take no more than 3 minutes. To ensure proper grinding and an adequate amount of the ground sample for analysis, the minimum sample size of all commercial products to be ground should not be less than 100 grams.

To ensure precision of analyses for nicotine, total moisture, and pH, the samples that require grinding should be ground using a Robot Coupe Model RSI 2V Scientific Batch Processor or its equivalent. This is a variable speed (0 to 3000 RPM) processor. The variable speed motor is required to ensure proper grinding of the tobacco tissues (and in the case of pH determination, the portion pack). Elevated temperatures can result in moisture loss and an underestimated value for moisture content. Hence, care must be taken during grinding to avoid elevated temperatures. The bowl should be cleaned after each grinding to obtain accurate results. Freeze- or cryo-grinding is also an acceptable grinding method.

1. Dry snuff: Dry snuff samples do not need to be ground since the product is a powder. The sample must be thoroughly mixed before weighing for nicotine, total moisture, and pH analysis.

2. Moist (wet) snuff: Moist (wet) snuff samples do not need to be ground. The sample must be thoroughly mixed before weighing for nicotine, total moisture, and pH analysis.

3. Moist (wet) snuff portion packs: The tobacco contents of the moist (wet) snuff portion packs do not need to be ground for nicotine, total moisture, or pH analysis. The tobacco packaging material (the ''pouch'') should be separated from the tobacco and ground to obtain particles measuring approximately 4 mm for pH analysis. The tobacco of the moist (wet) snuff portion pack and the ground pouch are combined and thoroughly mixed before pH analysis.

4. Plug tobacco: Break or cut apart plugs and add in portions to grinder at 2000 RPM. Reduce RPM or stop grinding if sample bowl becomes warm. Pulse the Robot Coupe, when needed, to complete grinding. Grind samples until approximately 4 mm in size. The total grinding time should be no more than 3 minutes.

5. Twist tobacco: Separate twists, add to grinder and grind at 2000 RPM. Reduce RPM or stop grinding if sample bowl becomes warm. Continue grinding until sample particles are approximately 4 mm in size. The total time for grinding should be no more than 3 minutes.

6. Loose leaf: Grind in the same manner as described in 4 and 5 to obtain product with particle size of approximately 4 mm.

7. Dry snuff portion packs: The tobacco contents of the dry snuff portion packs do not need to be ground for nicotine, total moisture, or pH analysis. The tobacco packaging material (the ''pouch'') should be separated from the tobacco and ground to obtain particles measuring approximately 4 mm for pH analysis. The tobacco of the dry snuff portion pack and the ground pouch are combined and thoroughly mixed before pH analysis.

8. Snus: Snus samples do not need to be ground since the product is a powder. The sample must be thoroughly mixed before weighing for nicotine, total moisture, and pH analysis.

9. Snus portion packs: The tobacco contents of the snus portion packs do not need to be ground for nicotine, total moisture, or pH analysis. The tobacco packaging material (the ''pouch'') should be separated from the tobacco and ground to obtain particles measuring approximately 4 mm for pH analysis. The tobacco of the snus portion pack and the ground pouch are combined and thoroughly mixed before pH analysis.

10. Pellet or compressed: Break apart compressed tobacco pellets and add in portions to grinder at 2000 RPM. Reduce RPM or stop grinding if sample bowl becomes warm. Pulse the Robot Coupe, when needed, to complete grinding. Grind samples until approximately 4 mm in size. The total grinding time should be no more than 3 minutes.

II. Nicotine Analysis [12]

A. Calibration Standards

1. Internal Standard (IS)

Weigh 10.00 grams of quinoline, transfer to a 250 mL volumetric flask and dilute to volume with MTBE. This solution will be used for calibration of the instrument for the nicotine calibration curve (II.A.2), for the standards addition assay (II.B), and for preparation of the extracting solution (II.D).

2. Nicotine Calibration Curve

a. Weigh 1.0000 gram of nicotine into a clean, dry 100 mL volumetric flask and dilute to volume with MTBE. This gives a nicotine concentration of 10 mg/mL for the stock solution.

b. Accurately pipette 0.5 mL of IS from stock solution (II.A.1) to five clean, dry 50 mL volumetric flasks. To prepare a nicotine standard corresponding to a concentration of 0.8 mg/mL, pipette exactly 4.0 mL of the nicotine standard (II.A.2.a) to a 50 mL volumetric flask containing the internal standard and dilute to volume with MTBE. To obtain nicotine concentrations equivalent to 0.6, 0.4, 0.2, and 0.1 mg/mL, pipette precisely 3.0, 2.0, 1.0, and 0.5 mL, respectively, of the nicotine standard into the four remaining flasks and dilute to volume with MTBE.

c. Transfer aliquots of the five standards to auto sampler vials and determine the detector response for each standard using gas chromatographic conditions described in I.E.

d. Calculate least squares line for linear equation from these standards by obtaining the ratio of $Area_{nicotine}/Area_{IS}$. This ratio will be the Y value and the concentration of nicotine will be the X value for determining the linear equation of the line (Equation 1):

Equation 1:

$$Y = a + bX;$$

Where:

X = Concentration of nicotine in mg
Y = $Area_{nicotine}/Area_{IS}$
a = intercept on the ordinate (y axis)
b = slope of the curve

The final result will be reported in the following units:

Concentration of nicotine = mg of nicotine/gram of tobacco sample.

e. Determine the recovery of nicotine by pipetting 10 mL of the 0.4 mg/mL nicotine standard to a screw capped tube containing 1.0 mL of 2 N NaOH. Cap the tube. Shake the contents vigorously and allow the phases to separate. Transfer an aliquot of the organic phase to an injection vial and inject. Calculate the concentration of nicotine using the equation of the line in II.A.2.d above. This should be repeated two more times to obtain an average of the three values. The recovery of nicotine can be obtained by using the following equation:

Equation 2:

$$Recovery = Nicotine_{calculated}/Nicotine_{actual}$$

B. Standards Addition Assay

Prior to analyzing a smokeless tobacco product for nicotine content, the testing facility must validate the system to verify that matrix bias is not occurring during nicotine extraction. This is done by analyzing the nicotine calibration standards in the same vegetable matrix as the smokeless tobacco. The first time each smokeless tobacco product is tested and whenever a change is made to the product formulation (including a change to the tobacco blend or cultivar), the Standards Addition Assay will be performed, and documentation of its performance and of the nicotine concentrations selected for the standard curve (II.B.2) will be submitted to the Centers for Disease Control and Prevention.

1. Using an analytical balance, accurately weigh 1.000 ± 0.020 gram of the homogeneous, prepared tobacco sample into a culture tube. Repeat this five times for a total of 6 culture tubes containing the smokeless tobacco product. Record the weight of each sample.

2. Prepare a five-point standard curve for the Standards Addition Assay. The standard curve must consist of nicotine concentrations that encompass the range of values expected from adding known concentrations of the nicotine standard (II.A.2.a) to a measured quantity of the smokeless tobacco product (1.000 ± 0.020 gram, described in II.B.1). The sixth culture tube is not supplemented with nicotine and serves as an analytical blank. Allow the samples to equilibrate for 10 minutes.

3. Pipette 5 mL of 2 N NaOH into each tube. Cap each tube. Swirl to wet sample and allow to stand 15 minutes.[13]

4. Pipette 50 mL of extraction solution (II.D.1) into each tube. Cap each tube and tighten.[14]

5. Place tubes in rack(s), place racks in linear shaker in horizontal position and shake for two hours.

6. Remove rack(s) from shaker and place in vertical position to allow the phases to separate.

7. Allow the solvent and nicotine supplemented samples and the blank to separate (maximum 2 hours).

8. Transfer aliquots of the five standards and the blank from the extraction tubes to sample vials and determine the detector response for each using gas chromatographic conditions described in I.E.

9. Subtract the $Area_{nicotine}/Area_{IS}$ of the blank from the $Area_{nicotine}/Area_{IS}$ of each of the standards.

10. Calculate least squares line for linear equation from the corrected standards as described above (Equation 1) in II.A.2.d. The final corrected result will be reported in the following units: Concentration of nicotine = mg of nicotine/gram of tobacco sample.

11. Determine the recovery of nicotine by pipetting 10 mL of the 0.4 mg/mL nicotine standard to a screw capped tube containing 1.0 mL of 2 N NaOH and 10 mL of extraction solution (II.D.1). Cap the tube and tighten. Shake the contents vigorously and allow the phases to separate. Transfer an aliquot of the organic phase to an injection vial and inject. Calculate the concentration of nicotine using the equation of the line above in II.A.2.d. This should be repeated two more times to obtain an average of the three values. The recovery of nicotine can be obtained by using Equation 2: Recovery = $Nicotine_{calculated}/Nicotine_{actual}$.

12. Compare the results of steps II.A.2 and II.B. If they differ by a factor of 10% or more, the recovery of nicotine from the aqueous matrix is not equivalent to recovery from the vegetable matrix of the smokeless tobacco product. In this instance, the nicotine concentration of the smokeless tobacco product must be determined from a nicotine calibration curve prepared from nicotine standards in a vegetable-based matrix.

C. Quality Control Pools

At least two quality control pools at the high and low ends of the expected nicotine values are recommended to be included in each analytical run. The pools should be analyzed in duplicate in every run. The quality control pools should be available in sufficient quantity to last for all analyses of a product.

D. Sample Extraction Procedure[12]

1. Extraction solution is prepared by pipetting 10 mL of the IS from the stock solution (II.A.1) to a 1000 mL volumetric flask and diluting to volume with MTBE.

2. Using an analytical balance, accurately weigh 1.000 ± 0.020 gram of prepared tobacco sample into culture tube and record weight.[15] Sample each smokeless tobacco brand name according to the provided testing frequency schedule.[19] The number of products sampled should reflect an acceptable level of precision.[16] The test material is to be representative of the product that is sold to the public and therefore should consist of sealed, packaged samples of finished product that is ready for commercial distribution. Samples are to be analyzed in duplicate.

3. Pipette 5 mL of 2 N NaOH into the tube. Cap the tube. Swirl to wet sample and allow to stand 15 minutes.[13]

4. Pipette 50 mL of extraction solution into tube, cap tube and tighten.[14]

5. Place tubes in rack(s), place racks in linear shaker in horizontal position and shake for two hours.

6. Remove rack(s) from shaker and place in vertical position to allow the phases to separate.

7. Allow the solvent and sample to separate (maximum 2 hours). Transfer an aliquot from the extraction tube to a sample vial and cap.

8. Analyze the extract using GC conditions as described above (I.E) and calculate the concentration of nicotine using the linear calibration equation. Correct percent nicotine values for both recovery and weight of sample by using Equation 3.[17]

Equation 3:[18]

$$\text{Nicotine (mg/g)} = \frac{\left(\text{Area}_{\text{nicotine}}/\text{Area}_{\text{IS}}\right) - a}{b \times \text{Sample Wt} \times \text{Recovery}}$$

9. Report the final nicotine determination as mg of nicotine per gram of the tobacco product (mg nicotine/gram), to an accuracy level of two decimal places for each brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.). All data should include the mean value with a 95% confidence interval, the range of values, the number of samples tested, the number of lots per brand name, and the estimated precision of the mean. Information will be reported for each manufacturer and variety (including brand families and brand variations) and brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.).

III. Total Moisture Determination

A. This procedure is a modification of AOAC Method 966.02 (1990) and is referred to as ''Total Moisture Determination'' because it determines water and tobacco constituents that are volatile at temperatures of 99 ± 1.0 °C.

B. Accurately weigh 5.00 grams of the sample (ground to pass ≤ 4 mm screen)[20] into a weighed moisture dish and place uncovered dish in oven.[21] Sample each smokeless tobacco brand name according to the provided testing frequency schedule.[19] The number of products sampled should reflect an acceptable level of precision.[16] The test material is to be representative of the product that is sold to the public and therefore should consist of sealed, packaged samples of finished product that is ready for commercial distribution. Samples are to be analyzed in duplicate.

C. Do not exceed 1 sample/10 sq in (650 sq cm) shelf space, and use only 1 shelf. Dry 3 hr at 99 ± 1.0 °C. Remove from oven, cover, and cool in desiccator to room temperature (about 30 min). Reweigh and calculate percent moisture.

D. Report the final moisture determination as a percentage (%), to an accuracy level of one decimal place for each brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.). All data should include the mean value with a 95% confidence interval, the range of values, the number of samples tested, the number of lots per brand name, and the estimated precision of the mean. Information will be reported for each manufacturer and variety (including brand families and brand variations) and brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.).

IV. pH Measurement [12 22]

A. Test samples as soon as possible after they are received. Sample each smokeless tobacco brand name according to the provided testing frequency schedule.[19] The number of products sampled should reflect an acceptable level of precision.[16] The test material is to be representative of the product that is sold to the public and therefore should consist of sealed, packaged samples of finished product that is ready for commercial distribution. Samples are to be analyzed in duplicate.

B. Accurately weigh 2.00 grams of the sample. Place in a 50 mL polypropylene container with 20 mL deionized distilled water.

C. Place Teflon-coated magnetic stirring bar in container and stir mixture continuously throughout testing.

D. Measure pH of sample after a two-point calibration of the pH meter to an accuracy of two decimal places using standard pH buffers (4.01 and 7.00 or 7.00 and 10.00) that will encompass the expected pH value of the smokeless tobacco product.

E. The first time pH values are determined for a smokeless tobacco product, measure the pH of the smokeless tobacco product at 5, 15, and 30 minutes. If there is no systematic variation in pH values with time, all subsequent pH determinations are made at 5 minutes. If there is systematic variation in pH values, continue to measure the pH of the smokeless tobacco product until the pH value is stable and does not vary more than 10% over 15 minutes. Report the final pH value.

F. Report the final pH determination to an accuracy level of two decimal places for each brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.). All data should include the mean value with a 95% confidence interval, the range of values, the number of samples tested, the number of lots per brand name, and the estimated precision of the mean. Information will be reported for each manufacturer and variety (including brand families and brand variations) and brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.).

G. Estimate the un-ionized (free) nicotine content with the Henderson-Hassel Balch equation (Equation 4), based on measured pH and nicotine content.

Equation 4:

$$pH = pKa + \log \frac{[B]}{[BH^+]}$$

$$B + H^+ = BH^+$$

$$\% \text{ un-ionized (free) nicotine} = \frac{\frac{[B]}{[BH^+]}}{\frac{[B]}{[BH^+]} + 1} \times 100$$

pKa = 8.02 (CRC Handbook of Chemistry and Physics, 1989–1990)
[B] = amount of un-ionized (free) nicotine
[BH^+] = amount of ionized nicotine

H. Report the final estimated un-ionized (free) nicotine as a percentage (%) of the total nicotine content, to an accuracy level of two decimal places and as mg of un-ionized (free) nicotine per gram of the tobacco product (mg un-ionized (free) nicotine/gram), to an accuracy level of two decimal places for each brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.). All data should include the mean value with a 95% confidence interval, the range of values, the number of samples tested, the number of lots per brand name, and the estimated precision of the mean. Information will be reported for each manufacturer and variety (including brand families and brand variations) and brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.).

Sample calculation:

Mean total nicotine = 10.30 (mg/g)
Mean pH = 7.50
pKa = 8.02

$$pH = pKa + \log \frac{[B]}{[BH^+]}$$

$$7.50 = 8.02 + \log \frac{[\text{un-ionized (free) nicotine}]}{[\text{ionized nicotine}]}$$

$$-0.52 = \log \frac{[\text{un-ionized (free) nicotine}]}{[\text{ionized nicotine}]}$$

$$0.302 = \frac{[\text{un-ionized (free) nicotine}]}{[\text{ionized nicotine}]}$$

$$\%\ \text{un-ionized (free) nicotine} = \frac{\frac{[B]}{[BH^+]}}{\frac{[B]}{[BH^+]}+1} \times 100$$

$$\%\ \text{un-ionized (free) nicotine} = \frac{0.302}{0.302+1} \times 100$$

$$\%\ \text{un-ionized (free) nicotine} = 23.20$$

$$\text{Total free nicotine (mg/g)} = \text{total nicotine} \times \frac{\%\ \text{un-ionized (free) nicotine}}{100}$$

$$\text{Total free nicotine (mg/g)} = 10.30 \times \frac{23.20}{100}$$

$$\text{Total free nicotine (mg/g)} = 2.39$$

V. Assay Criteria for Quality Assurance

A. Establishing Limits for Quality Control Parameters

All quality control parameters must be determined within the laboratory in which they are to be used. At least 10 within-laboratory runs must be performed to establish temporary confidence intervals for the quality control parameters. Permanent limits should be established after 20 runs and should be reestablished after each additional 20 runs.

B. Exclusion of Outliers From the Calibration Curve [18]

The coefficient of determination between $Area_{nicotine}/Area_{IS}$ and nicotine concentration should be equal to 0.99 or higher. Any calibration standard having an estimated concentration computed from the regression equation (Equation 1) which is different from its actual concentration by a factor of 10% can be excluded from the calibration curve. Up to two concentrations may be excluded, but caution should be used in eliminating values, since bias may be increased in the calibration curve. If an outlier value is eliminated, its duplicate value must also be discarded to avoid producing a new bias. All unknowns must fall within the calibration curve; therefore, duplicate values excluded at either end of the calibration curve will restrict the useful range of the assay.

C. Quality Control Pools and Run Rejection Rules

The mean estimated nicotine concentration in a pool should be compared with the established limits for that pool based on at least 20 consecutive runs. An analytical run should be accepted or rejected based upon the following set of rules adapted from Westgard et al. (1981).

1. When the mean of one QC pool exceeds the limit of x ± 3 standard deviations (SD), then the run is rejected as out of control. Here, x and SD represent the overall mean and standard deviation of all estimated nicotine concentrations for a particular pool in the runs which were used to establish the control limits.

2. When the mean nicotine concentrations in two QC pools in the same run exceed the same direction, then the run must be rejected. The same direction is the condition in which both pools exceed either the x + 2 SD or the x − 2 SD limits.

3. When the mean nicotine concentrations in one or two QC pools exceed their x ± 2 SD limits in the same direction in two consecutive runs, then both runs must be rejected.

4. When the mean nicotine concentrations in two QC pools are different by more than a total of 4 SD, then the run must be rejected. This condition may occur, for example, when one QC pool is 2 SD greater than the mean, and another is 2 SD less than the mean.

Endnotes

The comments and notes listed below can be described as Good Laboratory Practice guidelines; they are described in detail in this protocol to ensure minimal interlaboratory variability in the determination of nicotine, total moisture, and pH in smokeless tobacco.

[1] This protocol assumes that the testing facility will implement and maintain a stringent Quality Assurance/Quality Control program to include, but not be limited to, regular interlaboratory comparisons, determination of the quality and purity of purchased products, and proper storage and handling of all reagents and samples.

[2] When a specific product or instrument is listed, it is the product or instrument that was used in the development of this method. Equivalent products or instruments may also be used. Use of trade names is for identification only and does not constitute endorsement by the Public Health Service or the U.S. Department of Health and Human Services.

[3] All chemicals, solvents, and gases are to be of the highest purity.

[4] Companies must ensure that the purity of the nicotine base is certified by the vendor and that the chemical is properly stored. However, nicotine base oxidizes with storage, as reflected by the liquid turning brown. If oxidation has occurred, the nicotine base should be distilled prior to use in making a standard solution.

[5] A suggested method for the determination of nicotine purity is CORESTA Recommended Method No. 39.

[6] Horizontal shaking will allow more intimate contact of this three phase extraction. There is a minimal dead volume in the tube due to the large sample size and extraction volume. This necessitates horizontal shaking.

[7] If a linear shaker is not available, a wrist action shaker using 250 mL stoppered Erlenmeyer flasks can be substituted. Values for nicotine are equivalent to those obtained from the linear shaker.

[8] After installing a new column, condition the column by injecting a tobacco sample extract on the column, using the described column conditions. Injections should be repeated until areas of IS and nicotine are reproducible. This will require approximately four injections. Recondition column when instrument has been used infrequently and after replacing glass liner.

[9] Glass liner and septum should be replaced after every 100 injections.

[10] Most older instruments operate at constant pressure. To reduce confusion, it is suggested that the carrier gas flow through the column be measured at the initial column temperature.

[11] The testing facility must ensure that samples are obtained through the use of a survey design protocol for sampling ''at one point in time'' at the factory or warehouse. The survey design protocol must address short-, medium-, and long-term smokeless tobacco product variability (e.g., variability over time and from container to container of the tobacco product) in a manner equivalent to that described for cigarette sampling in Annex C of ISO Protocol 8243. Information accompanying results for each sample should include, but not be limited to:

For each product—manufacturer and variety (including brand families and brand variations) and brand name (e.g., Skoal Bandits, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.):

1. Product ''category,'' e.g., loose leaf, plug, twist, dry snuff, moist (wet) snuff, etc.
2. Lot number.
3. Lot size.
4. Number of randomly sampled, sealed, packaged (so as to be representative of the product that is sold to the public) smokeless tobacco products selected (sampling fraction) for nicotine, moisture, and pH determination.
5. Documentation of method used for random sample selection.
6. ''Age'' of product when received by testing facility and storage conditions prior to analysis.

[12] Extraction of nicotine and pH determination must be performed with reagents and samples at a room temperature of 22–25 °C. Room temperature should not vary more than 1°C during extraction of nicotine or pH determination.

[13] Use non-glass 10 mL repipette for transferring NaOH solution.

[14] Use 50 mL repipette for transferring MTBE.

[15] For dry snuff, use 0.500 ± 0.010 gram sample.

[16] The testing facility is referred to ISO Procedure 8243 for a discussion of sample size and the effect of variability on the precision of the mean of the sample (ISO 8243, 1991).

[17] When analyzing new smokeless tobacco products, extract product without IS to determine if any components co-elute with the IS or impurities in the IS. This interference could artificially lower calculated values for nicotine.

[18] The calculated nicotine values for all samples must fall within the low and high nicotine values used for the calibration curve. If not, prepare a fresh nicotine standard solution and an appropriate series of standard nicotine dilutions. Determine the detector response for each standard using chromatographic conditions described in I.E.

[19] The testing frequency for each smokeless tobacco brand name (e.g., Skoal Bandits Wintergreen, Skoal Long Cut Cherry, Skoal Long Cut Wintergreen, etc.) is based on the manufacturing duration (refer to table below). Each smokeless tobacco brand name will be sampled and tested for nicotine, total moisture, and pH no fewer than twice and no more than four times during a calendar year.

Manufacturing duration in weeks	Test frequency *
up to and including 4	2
up to and including 28	3
up to and including 52	4

* Use a statistical program to determine random sampling dates based on the total manufacturing duration during a calendar year. Sampling dates should fall on actual manufacturing days for the product when test material that is representative of the product that is sold to the public (consisting of sealed, packaged samples) is available. If a statistically determined sampling date falls on a day that does not meet this criterion, sample the product on the next date that does meet the criteria.

For smokeless tobacco brand names with episodic production during a calendar year, the total number of sampling dates is determined by the sum of the individual test frequencies, not to exceed four. For the purpose of the Protocol, episodic production is defined as manufacturing intervals separated by periods of 30 or more days when the smokeless tobacco brand name is not manufactured.

Example 1: Within a single calendar year a smokeless tobacco brand name is manufactured from January 1 to March 31 and from September 1 to December 15. The testing frequency for the first manufacturing interval is 3 and for the second manufacturing interval is 3. The Protocol allows that each smokeless tobacco brand name be tested for nicotine, total moisture, and pH no more than four times during a calendar year. Therefore, 4 random sampling dates, as described in the footnote to the above table, are determined for the smokeless tobacco brand name. The values for nicotine, moisture, and pH determinations, and unionized (free) nicotine calculations and the mean of the 4 data points for that smokeless tobacco brand name are reported.

Example 2: Within a single calendar year a smokeless tobacco brand name is manufactured from April 5 to May 3 and from September 1 to December 15. The testing frequency for the first manufacturing interval is 2 and for the second manufacturing interval is 3. The values for nicotine, moisture, and pH determinations, and unionized (free) nicotine calculations and the mean of the 4 data points for that smokeless tobacco brand name are reported.

Example 3: Within a single calendar year a smokeless tobacco brand name is manufactured from January 1 to January 15 and from September 1 to September 22. The testing frequency for the first manufacturing interval is 2 and for the second manufacturing interval is 2. Four random sampling dates are selected to fall within the 6 weeks of manufacturing for the smokeless tobacco brand name. The values for nicotine, moisture, and pH determinations, and unionized (free) nicotine calculations and the mean of the 4 data points for that smokeless tobacco brand name are reported.

[20] The method is a modification of AOAC Method 966.02 (1990) in that the ground tobacco passes through a 4 mm screen rather than a 1 mm screen.

[21] When drying samples, do not dry different products (e.g., moist (wet) snuff, dry snuff, loose leaf) in the oven at the same time since this will produce errors in the moisture determinations.

[22] The method is a modification of a method published by Henningfield *et al.* (1995).

References

AOAC (Association of Official Analytical Chemists). Official Methods of Analysis. 966.02: Moisture in Tobacco. (1990) Fifth Edition. K. Helrich (ed). Association of Official Analytical Chemists, Inc., Suite 400, 2200 Wilson Boulevard, Arlington, Virginia 22201 USA.

CORESTA (Centre de Coopération pour les Recherches Scientifiques relatives au Tabac). Recommended Method No. 39: Determination of the purity of nicotine and nicotine salts by gravimetric analysis—Tungstosilic acid method. November 1994. 87–90.

CRC Handbook of Chemistry and Physics. R.C. Weast, D.R. Lide, M.J. Astle, and W.H. Beyer (eds). 70th ed. Boca Raton, Florida: CRC Press (1989–1990) D–162.

Henningfield, J.E., Radzius A., Cone E.J. (1995). Estimation of available nicotine content of six smokeless tobacco products. Tobacco Control 4:57–61.

ISO (International Organization for Standardization). IOS 8243: Cigarettes—Sampling. (1991). Second Edition. Prepared by Technical Committee ISO/TC 126, Tobacco and tobacco products. International Organization for Standardization, Case Postale 56, CH–1211 Genve 20, Switzerland.

Westgard, J.O., Barry P., Hunt M., and Groth T. (1981). A multi-rule Shewhart chart for quality control in clinical chemistry. Clinical Chemistry 27:493.

[FR Doc. E8–14112 Filed 6–20–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0184]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Temporary Marketing Permit Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 23, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0133. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Temporary Marketing Permit Applications—21 CFR 130.17(c) and (i)—(OMB Control Number 0910–0133)—Extension

Section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341), directs FDA to issue regulations establishing definitions and standards of identity for food ''[w]henever * * * such action will promote honesty and fair dealing in the interest of consumers * * *.'' Under section 403(g) of the act (21 U.S.C. 343(g)), a food that is subject to a definition and standard of identity prescribed by regulation is misbranded if it does not conform to such definition and standard of identity. Section 130.17 (21 CFR 130.17) provides for the issuance by FDA of temporary marketing permits that enable the food industry to test consumer acceptance and measure the technological and commercial feasibility in interstate commerce of experimental packs of food that deviate from applicable definitions and standards of identity. Section 130.17(c) enables the agency to monitor the manufacture, labeling, and distribution of experimental packs of food that deviate from applicable definitions and standards of identity. The information so obtained can be used in support of a petition to establish or amend the applicable definition or standard of identity to provide for the variations. Section 130.17(i) specifies the information that a firm must submit to FDA to obtain an extension of a temporary marketing permit.

In the **Federal Register** of April 2, 2008 (73 FR 17986), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
130.17(c)	13	2	26	25	650
130.17 (i)	1	2	2	2	4
Total					654

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of temporary marketing permit applications and hours per response is an average based on the agency's experience with applications received October 1, 2004, through September 30, 2007, and information from firms that have submitted recent requests for temporary marketing permits.

Dated: June 17, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–14151 Filed 6–20–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2006–E–0440] (formerly Docket No. 2006E–0483)

Determination of Regulatory Review Period for Purposes of Patent Extension; ERAXIS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ERAXIS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51,

rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product, ERAXIS (anidulafungin). ERAXIS is indicated for treatment of the following fungal infections: Candidemia and other forms of Candida infections (intra-abdominal abscess and peritonitis), and esophageal candidiasis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ERAXIS (U.S. Patent No. 5,965,525) from Eli Lilly and Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 6, 2007, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ERAXIS represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ERAXIS is 3,476 days. Of this time, 2,446 days occurred during the testing phase of the regulatory review period, while 1,030 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 14, 1996. The applicant claims July 15, 1996, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 14, 1996, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: April 25, 2003. The applicant claims August 18, 2005, as the date the new drug application (NDA) 21–948 for ERAXIS was initially submitted. However, FDA records indicate that NDA 21–948 was not the first NDA for anidulafungin submitted to the agency by Vicuron Pharmaceuticals, Inc., the owner of the applications at the time of submission. NDA 21–632, Vicuron's first NDA for anidulafungin, was submitted on April 25, 2003.

3. *The date the application was approved*: February 17, 2006. FDA has verified the applicant's claim that NDA 21–948 was approved on February 17, 2006. NDA 21–632 was also approved on February 17, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,224 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 22, 2008. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 22, 2008. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov.*

Dated: June 9, 2008.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E8–14156 Filed 6–20–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting 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: Minority Programs Review Committee; Minority Programs Review Subcommittee A.

Date: July 10, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Embassy Row Hotel, 2100 Massachusetts Avenue, NW., Washington, DC 20008.

Contact Person: Mona R. Trempe, PhD, Scientific Review Officer, Office of Scientific

Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–3998, *trempemo@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–14139 Filed 6–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Bridges to Baccalaureate.

Date: July 15, 2008

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12F, Bethesda, MD 20892, 301–594–2881, *sunshinh@nigms.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Training Grants.

Date: July 15, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 45, Room 3AN18F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Arthur L. Zachary, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Trauma and Burn.

Date: July 18, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Lisa Dunbar, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–2849, *dunbarl@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–14138 Filed 6–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket # USCG–2008–0369]

Area Maritime Security Advisory Committee (AMSC), Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for Membership.

SUMMARY: This notice requests individuals interested in serving on the Area Maritime Security Committee (AMSC) Boston, MA submit their applications for membership to the Captain of the Port (COTP) Boston, MA.

DATES: Requests for membership should reach the U.S. Coast Guard Captain of the Port Boston, MA by July 23, 2008.

ADDRESSES: Applications for membership should be submitted to the Captain of the Port at the following address: Captain of the Port Boston, U.S. Coast Guard Sector Boston, Contingency Planning and Force Readiness Department, 427 Commercial St., Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application or about the AMSC in general, contact Mr. Phillip Smith, 617–223–3008.

SUPPLEMENTARY INFORMATION:

Authority

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to Title 46 of the U.S. Code, and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees for any port area of the United States. (See 33 U.S.C. 1226; 46 U.S.C.; 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1). The MTSA includes a provision exempting these AMSCs from the Federal Advisory Committee Act (FACA), Public Law 92–436, 86 Stat. 470 (5 U.S.C. App. 2). The AMSCs shall assist the Captain of the Port in the development, review, update, and exercising of the AMS Plan for their area of responsibility. Such matters may include, but are not limited to: identifying critical port infrastructure and operations; identifying risks (threats, vulnerabilities, and consequences); determining mitigation strategies and implementation methods; developing strategies to facilitate the recovery of the MTS after a Transportation Security Incident; developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and providing advice to, and assisting the Captain of the Port in developing and maintaining the Area Maritime Security Plan.

AMSC Membership

Members of the AMSC should have at least 5 years of experience related to maritime or port security operations. The Boston AMSC has 29 members. We are seeking to fill 6 vacancies with this solicitation. Applicants may be required to pass an appropriate security background check prior to appointment

to the Committee. Members' term of office will be for 5 years; however, a member is eligible to serve additional terms of office. Members will not receive any salary or other compensation for their service on the AMSC. In support of the USCG policy on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Request for Applications

Those seeking membership are not required to submit formal applications to the local Captain of the Port, however, because we do have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, we encourage the submission of resumes highlighting experience in maritime and security industries.

Dated: May 15, 2008.

Gail P. Kulisch,

Captain, U.S. Coast Guard, Captain of the Port/Federal Maritime Security CoordinatorCommander, Coast Guard Sector Boston, MA.

[FR Doc. E8–14051 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0436]

Nontank Vessel Response Plan Enforcement

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Coast Guard is issuing this notice to inform U.S. and foreign flag nontank vessel owners and operators that effective August 22, 2008, we will begin enforcing the requirement to prepare and submit a nontank vessel response plan (NTVRP) for certain nontank vessels, as required by the Coast Guard and Maritime Transportation Act of 2004.

DATES: The policy announced in this document will become effective August 22, 2008. Comments and related materials must reach the Docket Management Facility on or before July 23, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0436 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

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

(3) *Hand Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: For questions on this policy, contact Lieutenant Jarrod DeWitz, U.S. Coast Guard, telephone 202–372–1219 or *vrp@uscg.mil.* If you have questions on viewing or submitting material to the docket, please call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials about the enforcement policy announced in this notice. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

If you submit a comment, please include the docket number for this notice (USCG–2008–0436), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility listed under **ADDRESSES**. If you choose to submit them by mail or hand delivery, submit them in an unbound format, no longer than 8 ½ by 11 inches, and suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period.

Background and Purpose

Section 701 of the Coast Guard and Maritime Transportation Act of 2004 (CGMTA), Pub. L. 108–293, amended section 311(j)(5)of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1321(j)(5), and required owners and operators of nontank vessels to prepare and submit by August 9, 2005, plans for responding: (1) To a worst case discharge; and (2) to a substantial threat of such a discharge of oil from their vessels. A nontank vessel is defined as a self-propelled vessel of 400 gross tons or greater, which carries oil as fuel for main propulsion and operates on the navigable waters of the United States. Vessels that carry oil as primary or secondary cargo are currently regulated under 33 CFR part 155, subpart D, and are not subject to this notice. The 2004 Act also requires promulgation of regulations that prescribe the content and submission of the nontank vessel response plans.

The Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241) clarified that nontank vessel response plans are required for vessels of 400 gross tons or greater as measured under the International Convention on Tonnage Measurement of Ships, 1969, measurement system in 46 U.S.C. 14302, or the regulatory measurement system of 46 U.S.C 14502 for vessels not measured under 46 U.S.C. 14302.

Since the passage of the 2004 Act, the Coast Guard has published Navigation and Vessel Inspection Circular (NVIC) 01–05 CH 1 and a Federal Notice on June 24, 2005 (70 FR 36649) providing guidance with respect to enforcement of these requirements. NVIC 01–05 CH 1 also provides guidance to vessel owners and operators regarding the development of NTVRPs to meet the intent of the 2004 Act for the immediate submission of NTVRPs and for the Coast Guard's issuance of 2-year interim operating authorizations pending issuance of a final rule.

Considering that some nontank vessels still have not submitted a NTVRP to the Coast Guard and that the risks associated with oil spills from large nontank vessels similar to the November 7, 2007, COSCO BUSAN oil spill in San Francisco Bay, the Coast Guard will, effective August 22, 2008, begin actively enforcing the 2004 Act by screening all nontank vessels prior to their port arrival for the submission of NTVRPs. In an effort to devote our enforcement resources to those nontank vessels that pose the greatest risk in the event of a worst case discharge, this interim enforcement policy will focus on those nontank vessels of 1,600 gross tons or greater. For such vessels without a properly submitted plan, operational controls will be placed on the vessels by the Captains of the Port (COTP) under the authority of regulations in 33 CFR

160.111 issued under the Ports and Waterways Safety Act.

Nontank vessels less than 1,600 gross tons are considered to pose less of a threat, in part because of the smaller quantities of fuel carried and the light weight or distillate fuel oil that they generally use. Under section 701 of the 2004 Act, these vessels are still required to submit NTVRPs consistent with 33 U.S.C. 1321(j)(5).

Until NTVRP regulations are issued and in effect, the Coast Guard will continue to issue 2-year interim operating authorization letters for NTVRPs meeting the requirements found in 33 U.S.C. 1321(j)(5)(D). Vessel owners or operators of a nontank vessel shall ensure that the plan:

(1) Is consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

(2) Identifies the qualified individual having full authority to implement removal actions, and requires immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment;

(3) Identifies, and ensures by contract or other means approved by the President the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

(4) Describes the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

(5) Is updated periodically; and

(6) Is resubmitted for approval of each significant change.

Vessel owners and operators are encouraged to submit plans in accordance with the guidance of NVIC 01–05 CH 1. Plans submitted to the Coast Guard consistent with this guidance will facilitate issuance of interim operating authorizations.

Once plans are received for review, the Coast Guard will issue an acknowledgement receipt. For plans that do not meet the elements described above, the Coast Guard will send the owner or operator a revision request identifying the deficient elements. If the Coast Guard finds the elements of a response plan to be not in compliance with the requirements of 33 U.S.C. 1321(j)(5)(D) as amended by the 2004 Act, the Coast Guard may initiate vessel operational controls under authority of 33 U.S.C. 1233 and 33 CFR 160.111.

The Coast Guard is interested in receiving comments on this policy notice.

Dated: June 18, 2008.

Brian M. Salerno

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security And Stewardship.

[FR Doc. E8–14115 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196]

Transportation Worker Identification Credential (TWIC); Enrollment Dates for the Ports of Bridgeport, CT; New Castle, DE; Burlington, VT; Pennsbury Manor, PA; Alpena, MI; Perth Amboy, NJ; and Evansville, IN

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Ports of Bridgeport, CT; New Castle, DE; Burlington, VT; Pennsbury Manor, PA; Alpena, MI; Perth Amboy, NJ; and Evansville, IN.

DATES: TWIC enrollment begins in Bridgeport and New Castle on June 25, 2008; Burlington, Pennsbury Manor, Alpena, and Perth Amboy on July 2, 2008; and Evansville on July 9, 2008.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

FOR FURTHER INFORMATION CONTACT: James Orgill, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov.*

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Pub. L. 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Ports of Bridgeport, CT and New Castle, DE on June 25, 2008; Burlington, VT, Pennsbury Manor, PA, Alpena, MI, and Perth Amboy, NJ on July 2, 2008; and Evansville, IN on July 9, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Long Island Sound, including those in the Port of Bridgeport; Captain of the Port Zone Delaware Bay, including those in the Port of New Castle; Captain of the Port Zone Northern New England, including those in the Port of Burlington; Captain of the Port Zone Delaware Bay, including those in the Port of Pennsbury Manor; Captain of the Port Zone Sault Ste. Marie, including those in the Port of Alpena; Captain of the Port Zone New York, including those in the Port of Perth Amboy; and Captain of the Port Zone Ohio Valley, including those in the Port of Evansville must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at *http://www.tsa.gov/twic.*

Issued in Arlington, Virginia, on June 17, 2008.

Rex Lovelady,

Program Manager, TWIC, Office of Transportation Threat Assessment and Credentialing,Transportation Security Administration.

[FR Doc. E8–14053 Filed 6–20–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–PB–24 1A]

Revision of Approved Information Collection, OMB Control Number 1004–0169

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The ICR is scheduled to expire on July 31, 2008. The BLM 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. However, under OMB regulations, the BLM may continue to conduct or sponsor this information collection while it is pending at OMB. On January 25, 2008, the BLM published the required 60-day notice in the **Federal Register** (73 FR 4621), requesting comments on this proposed collection. The comment period ended on March 25, 2008. The BLM received no comments. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed in the **ADDRESSES** section below.

DATES: The OMB is required to respond to this request within 60 days but may respond after 30 days. Submit your comments and suggestions to OMB at the address below by July 23, 2008 to receive maximum consideration.

ADDRESSES: Send your comments and suggestions on this ICR directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0169), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to Alexandra Ritchie, Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., Washington, DC 20240. Additionally, you may contact Alexandra Ritchie regarding this ICR at (202) 452–0388 (phone); (202) 653–5287 (fax); or *Alexandra_Ritchie@blm.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: For program-related questions, contact Roger Haskins on (202) 452–0355 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Haskins via message service. For questions regarding this ICR or the information collection process, contact Alexandra Ritchie by phone, mail, fax, or e-mail (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1004–0169.

Title: Use and Occupancy Under the Mining Laws, 43 CFR subpart 3715.

Bureau Form Number: Nonform information.

Type of Request: Revision of currently approved collection.

Affected Public: Private sector (mining claimants and operators of prospecting, exploration, mining, and processing operations).

Respondents' Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Section of reg.	Title	Estimated number of responses	Estimated hours per response	Estimated total hours	Total compensation ($19.56 × 1.4)	Estimated annual cost to the public
43 CFR 3715.3–2	Newly initiated or proposed occupancies.	25	2	50	$27.38	$1,400
43 CFR 3715.4	Existing occupancies	5	2	10	27.38	300
Total	.....	30	.....	60	.....	1,700

Abstract: The Bureau of Land Management proposes to extend the currently approved collection of information from mining claimants concerning use and occupancy of their mining claims on public lands. The nonform information authorizes the BLM to manage the use and occupancy on public lands for developing the mining deposits by mining claimants.

Comments: We again specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Dated: June 17, 2008.

Alexandra Ritchie,

Bureau of Land Management, Acting Bureau Information Collection Clearance Officer.

[FR Doc. E8–14121 Filed 6–20–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14871–A, F–14871–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to The Kuskokwim Corporation, Successor in Interest to Upper Kalskag, Incorporated. The lands are in the

vicinity of Upper Kalskag, Alaska, and are located in:

Lot 3, U.S. Survey No. 6484, Alaska

Containing 73.63 acres.

Seward Meridian, Alaska

T. 17 N., R. 59 W.,
Secs. 23 to 36, inclusive.

Containing 7,977.94 acres.

T. 16 N., R. 60 W.,
Secs. 3 to 8, inclusive.

Containing 3,657.59 acres.

T. 17 N., R. 60 W.,
Secs. 25, 26, and 27;
Secs. 31 to 36, inclusive.

Containing 4,895.29 acres.

T. 18 N., R. 60 W.,
Sec. 2.

Containing 640 acres.

T. 19 N., R. 60 W.,
Sec. 35.

Containing 640 acres.

T. 16 N., R. 61 W.,
Secs. 1 to 12, inclusive.

Containing 6,432.17 acres.

T. 17 N., R. 62 W.,
Secs. 18 and 19.

Containing 1,269.28 acres.

T. 17 N., R. 63 W.,
Secs. 13 and 14;
Secs. 23 and 24.

Containing 2,203.00 acres.

Aggregating 27,788.90 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to The Kuskokwim Corporation. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 23, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management,Alaska State Office,222 West Seventh Avenue, #13,Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robin Middleton,

Land Law Examiner,Land Transfer Adjudication II.

[FR Doc. E8–14157 Filed 6–20–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR932–6334–DF–062H; HAG–0125]

Notice of Intent (NOI) To Prepare an Environmental Impact Statement (EIS) for Vegetation Treatments Using Herbicides on BLM Lands in Oregon

AGENCY: USDI, Bureau of Land Management (BLM) Oregon/Washington State Office.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement (EIS).

SUMMARY: In accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the BLM in Oregon is beginning preparation of a programmatic Environmental Impact Statement (EIS) to analyze the use of 18 nationally approved herbicides to control noxious weeds; to treat invasive plants and other weeds in administrative sites, recreation sites, and rights-of-way; to treat forest pests and diseases; and to meet non-commodity landscape health objectives across nine BLM Districts in Oregon.

This EIS will tier to, and adopt procedures from, the programmatic *Vegetation Treatments Using Herbicides on BLM Lands in 17 Western States* EIS and Record of Decision (ROD) completed by the BLM in 2007 for the same 18 herbicides. The EIS will not amend existing District Resource Management Plans (RMPs).

DATES: Publication of this notice initiates a scoping period that runs through July 28, 2008. Written or e-mailed comments are being sought to help identify the relevant issues and environmental concerns, identify possible alternatives, and help determine the scope of the EIS. During the scoping period, the BLM will hold public scoping meetings in Oregon, at or near each of the nine BLM District Offices and in Klamath Falls and Baker City, to describe the proposal and solicit ideas for issues and alternatives to be considered in the EIS. Times and locations are included in **SUPPLEMENTARY INFORMATION** below and will be announced through local press releases, advertisements, and the project Web site.

FOR FURTHER INFORMATION CONTACT: For further information, to be placed on the mailing list, or to provide written comments, send e-mail to *ORVegTreatments@blm.gov* or contact Ken Denton, EIS Team Leader, OR/WA Bureau of Land Management–932, PO Box 2965, Portland, OR 97208; telephone (503) 808–6443. Additional information is also available on the project Web site at: *http://www.blm.gov/or/plans/vegtreatmentseis.*

Comments received will be available for public inspection at the Bureau of Land Management Oregon State Office reading room, located at 333 SW. First St., Portland, OR 97204. Before including your address, phone number, e-mail 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. The minutes and list of attendees for each scoping meeting will be available to the public and any participant who wishes to clarify the views he or she expressed may do so through the end of the scoping period.

SUPPLEMENTARY INFORMATION: BLM manages 15.7 million acres in Oregon. Invasive plants (including noxious weeds) affect over a million of these acres and are increasing at an estimated 10 to 15 percent per year. Invasive plants degrade soil and water quality, displace native vegetation, and negatively alter habitat for fish and wildlife. Noxious weeds, invasive plants, and other weeds also encroach on rights-of-ways and administrative and recreation sites. Currently, the BLM utilizes an integrated pest management approach for invasive plant and other weed management; which includes education, early detection and prevention measures, as well as manual, mechanical, cultural, biological, and chemical vegetation controls. However, chemical control on BLM lands in Oregon is currently limited to the use of four approved herbicides, and those are limited to treatment of federal-, state-, and county-designated noxious weeds (a subset of the invasive plants).

To improve the overall effectiveness of Oregon BLM's integrated pest management program, there is a need for access to a broader array of herbicides that are generally less toxic, more target-specific, and more effective at controlling noxious weeds, invasive plants, and other weeds.

The BLM in Oregon will analyze the use of up to 18 herbicide active ingredients approved for use in the national *Vegetation Treatments Using Herbicides on BLM Lands in 17 Western States* EIS and ROD completed by the BLM in 2007. The purpose of the Oregon EIS is to:

- Evaluate the effects of using up to 18 nationally approved herbicide active ingredients for treatment of noxious weeds; for treatment of invasive vegetation and other weeds in administrative sites, recreation sites, and rights-of-way; for treatment of forest pests and diseases; and to achieve non-commodity landscape health objectives.
- Incorporate the Risk Assessments, Standard Operating Procedures, and Mitigation Measures for herbicide application outlined in the National Programmatic EIS.
- Provide the necessary context and analysis of environmental effects that will enable each of the nine BLM Districts in Oregon to prepare National Environmental Policy Act (NEPA) analyses on site-specific projects and treatments.

The EIS will not evaluate herbicide use directed specifically at commodity production such as livestock forage production and timber production.

The National Programmatic EIS and Environmental Report completed in 2007 for the 17 western states (*http://www.blm.gov/wo/st/en/prog/more/veg_eis.html*) provided a programmatic analysis of the effects of using herbicides for treating vegetation on BLM lands in the western U.S., including Alaska. That EIS did not specifically address which herbicides, and in what quantities, would be used in Oregon. The Oregon EIS will tier to the National EIS. The Oregon EIS will, however, identify which herbicides will be available for use in Oregon and how those herbicides will be used as part of an integrated vegetation treatment program and provide Oregon-specific environmental effects of their use. Subsequent project-specific NEPA analyses will be conducted at the field-office level before individual projects are carried out.

The BLM has initially identified the following issues for analysis in the Oregon-wide programmatic EIS:

- Effects to fish and other non-target aquatic organisms;
- Effects to water quality;
- Effects to wildlife and other non-target terrestrial organisms;
- Public and worker health and safety;
- Treatment-effectiveness; and,
- Cost-effectiveness.

Meetings

Oregon Meeting Schedule

Date and Time—Location—Key Contact

July 7, 5–7 p.m.—Baker BLM Resource Area Office, 3285 11th Street, Baker City—Mark Wilkening (541) 473–6218.

July 8, 6:30–8 p.m.—Vale BLM District Office, 100 Oregon St., Vale—Mark Wilkening (541) 473–6218.

July 9, 5:30–7 p.m.—Harney County Senior Center, 17 S. Alder Ave., Burns—Tara Martinak (541) 573–4519.

July 10, 8–10 a.m.—Lakeview BLM Office, 1301 S. ''G'' Street, Lakeview—Scott Stoffel (541) 947–6237.

July 10, 1:30–3:30 p.m.—Klamath Falls, 2795 Anderson Avenue, Bldg. #25, Klamath Falls—Scott Stoffel (541) 947–6237.

July 14, 6:30–8 p.m.—North Bend Public Library, 1800 Sherman Ave., North Bend—Megan Harper (541) 751–4353.

July 15, 6:30–8:30 p.m.—Medford BLM Office, 3040 Biddle Road, Medford—James Whittington (541) 618–2220.

July 16, 6:30–8 p.m.—Umpqua National Forest Supervisor's Office, 2900 Stewart Pkwy, Roseburg—Robert Hall (541) 464–3245.

July 17, 6:30–8:30 p.m.—Harris Hall, Lane Co. Building, 125 E. 8th Ave., Eugene—Doug Huntington (541) 683–6415.

July 18, 6:30–8:30 p.m.—Downtown Hilton, Director's Suite, 921 SW. 6th Ave., Portland—Maya Fuller (503) 808–6437.

July 21, 6:30–8 p.m.—Salem BLM Office, 1717 Fabry Rd. SE., Salem—Trish Hogervorst (503) 375–5657.

July 22, 6:30–8 p.m.—Saint Joseph's Parish Hall, 200 East 1st St. Prineville—Teal Purrington (541) 416–6772.

Dated: June 13, 2008.

James G. Kenna,

Associate State Director, Oregon/Washington.

[FR Doc. E8–14159 Filed 6–20–08; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–920–1310–FI; CACA 45619]

Proposed Reinstatement of Terminated Oil and Gas Lease CACA 45619

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of Public Law 97–451, Western States International, Inc timely filed a petition for reinstatement of oil and gas lease CACA 45619 for lands in Kern County, California, and it was accompanied by all required rentals and royalties accruing from March 1, 2008, the date of termination.

FOR FURTHER INFORMATION CONTACT: Rita Altamira, Land Law Examiner, Branch of Adjudication, Division of Energy & Minerals, BLM California State Office, 2800 Cottage Way, W–1834, Sacramento, California 95825, (916) 978–4378.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective March 1, 2008, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: June 9, 2008.

Debra Marsh,

Supervisor, Branch of Adjudication, Division of Energy & Minerals.

[FR Doc. E8–14096 Filed 6–20–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW173501]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Black Hills Exploration and Production, Inc. for Competitive oil and gas lease WYW173501 for land in Weston County, Wyoming. The petition was

filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW173501 effective December 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E8–14155 Filed 6–20–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 17, 2008, a proposed Consent Decree (''Decree'') in United States v. John Woodhams, Civil Action No. 3:07–CV–0074–RRE–KKK was lodged with the United States District Court for the District of North Dakota.

The Decree resolves the United States' claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, for reimbursement of response costs incurred in connection with the release or threatened release of hazardous substances at the Camelot Cleaners Site in West Fargo, North Dakota (''Site''). The Decree requires Defendant to pay $300,000 to the United States for response costs and assign to the United States all potential rights to insurance claim proceeds relating to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *John Woodhams*, D.J. Ref. 90–11–3–09038.

The Decree may be examined at the Office of the United States Attorney, District of North Dakota, 655 First Avenue North, Suite 250, Fargo, ND 58102–4932, and at U.S. EPA Region 8, 1595 Wynkoop St., Denver, CO 80202–1129. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–14056 Filed 6–20–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement; Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Consent Decree in *United States* v. *Dravo Corporation* (Civil Action No. 8:04–CV–356), which was lodged with the United States District Court for the District of Nebraska on June 16, 2008. The Complaint alleges that Dravo is civilly liable for violations under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607(a). The Complaint seeks the recovery of response costs incurred and to be incurred by the United States as a result of releases or threatened releases of hazardous substances at or from the Hastings Naval Ammunition Depot Subsite of the Hastings Ground Water Contamination Site, located in Hastings, Adams County, Nebraska.

Under the settlement, Dravo Corporation has agreed to pay to the United States one million one hundred sixty-one thousand dollars ($1,161,000.00) for the recovery of these response costs.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and may be submitted to: P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or via e-mail to *pubcomment-ees.enrd@usdoj.gov*, and should refer to *United States* v. *Dravo Corporation,* D.J. Ref. 90–11–2–1260/2.

The Consent Decree may be examined at the Office of the United States Attorney. District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, NE 68102–1506. During the public comment period the Dravo Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Dravo Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–14041 Filed 6–20–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–306R]

Proposed Revised Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2008

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 2008 assessment of annual needs for the list I chemicals ephedrine,

pseudoephedrine, and phenylpropanolamine.

SUMMARY: This notice proposes revised 2008 assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before July 23, 2008.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–306R'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* However, persons wishing to request a hearing should note that such requests must be written and manually signed; requests for a hearing will not be accepted via electronic means. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 713 of the Combat Methamphetamine Epidemic Act of 2005 (Title VII of Pub. L. 109–177) (CMEA) amended Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) by adding ephedrine, pseudoephedrine, and phenylpropanolamine to existing language to read as follows: ''The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.'' Further, 715 of CMEA amended 21 U.S.C. 952 ''Importation of controlled substances'' by adding the same List I chemicals to the existing language in paragraph (a), and by adding a new paragraph (d) to read as follows:

(a) Controlled substances in schedule I or II and narcotic drugs in schedule III, IV, or V; exceptions

It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of Subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of Subchapter I of this chapter, or ephedrine, pseudoephedrine, and phenylpropanolamine, except that—

(1) such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves, and of ephedrine, pseudoephedrine, and phenylpropanolamine, as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes, and

* * * * *

(d)(1) With respect to a registrant under Section 958 who is authorized under subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine, at any time during the year the registrant may apply for an increase in the amount of such chemical that the registrant is authorized to import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

Editor's Note: This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 952(a) and (d)(1).

On December 27, 2007, a notice was published in the **Federal Register** which established the assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine (72 FR 73361). Pursuant to 21 CFR 1315, the Deputy Administrator of the DEA will, in early 2008, adjust the assessment of annual needs and individual importing and manufacturing quotas allocated for the year based upon 2007 year-end inventory and 2007 disposition data supplied by quota recipients for ephedrine, pseudoephedrine, and phenylpropanolamine, and other information available to the DEA.

The proposed revised 2008 assessment of annual needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and/or imported into the United States to provide adequate supplies of each substance for: The estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes the following revised 2008 assessment of annual needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine for 2008, expressed in grams of anhydrous base:

List I chemicals	Previously established initial 2008 assessment/ (kg)	Proposed revised 2008 assessment/ (kg)
Ephedrine (for sale)	11,500	11,500
Ephedrine (for conversion)	128,760	128,760
Pseudoephedrine (for sale)	511,100	511,100
Phenylpropanolamine (for sale)	5,545	5,545
Phenylpropanolamine (for conversion)	85,470	85,470

All interested persons are invited to submit their comments in writing or electronically regarding this proposal following the procedures in the **ADDRESSES** section of this document. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the

others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief. Persons wishing to request a hearing should note that such requests must be written and manually signed; requests for a hearing will not be accepted via electronic means. In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1315.13(e).

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this action will not have a significant economic impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601–612. The establishment of the assessment of annual needs for ephedrine, pseudoephedrine and phenylpropanolamine is mandated by law. The assessments are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for lawful export requirements, and the establishment and maintenance of reserve stocks. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Executive Order 12866

The Office of Management and Budget has determined that notices of assessment of annual needs are not subject to centralized review under Executive Order 12866.

Executive Order 13132

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This action will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: June 6, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–14108 Filed 6–20–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0020]

Slings; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Standard on Slings (29 CFR 1910.184). The collection of information (paperwork) provisions of the Standard specify affixing identification tags or markings on slings, developing and maintaining inspection records, and retaining proof testing certificates.

DATES: Comments must be submitted (postmarked, sent, or received) by August 22, 2008.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0020, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2008–0020). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information(*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, RoomN–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program

ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Slings Standard (29 CFR 1910.184) specifies several collection of information (paperwork) requirements, depending on the type of sling. The purpose of each of these requirements is to prevent employees from using defective or deteriorated slings, thereby reducing their risk of death or serious injury caused by sling failure during material handling.

Paragraph (e) of the Standard covers alloy steel chain slings. Paragraph (e)(1) requires that alloy steel chain slings have permanently affixed and durable identification stating the size, grade, rated capacity, and reach of the sling. The information, supplied by the manufacturer, is typically marked on a metal tag and affixed to the sling.

Paragraph (e)(3)(i) requires the employer to make a thorough periodic inspection of alloy steel chain slings in use on a regular basis, but at least once a year. Paragraph (e)(3)(ii) requires the employer to make and maintain a record of the most recent month in which each alloy steel chain sling was thoroughly inspected, and make this record available for examination.

Paragraph (e)(4) requires the employer to retain certificates of proof testing. Employers must ensure that before use, each new, repaired, or reconditioned alloy steel chain sling, including all welded components in the sling assembly, has been proof tested by the sling manufacturer or an equivalent entity. The certificates of proof testing must be retained by the employer and made available for examination.

Paragraph (f) of the Standard covers wire rope slings. Paragraph (f)(4)(ii) requires that all welded end attachments of wire rope slings be proof tested by the manufacturer at twice their rated capacity prior to initial use, and that the employer retain a certificate of the proof test and make it available for examination.

Paragraph (g) of the Standard covers metal mesh slings. Paragraph (g)(1) requires each metal mesh sling to have a durable marking permanently affixed that states the rated capacity for vertical basket hitch and choker hitch loadings. Paragraph (g)(8)(ii) requires that once repaired, each metal mesh sling be permanently marked or tagged, or a written record maintained to indicate the date and type of the repairs made, and the person or organization that performed the repairs. Records of the repairs shall be made available for examination.

Paragraph (i) of the Standard covers synthetic web slings. Paragraph (i)(1) requires that synthetic web slings be marked or coded to show the rated capacities for each type of hitch and the type of synthetic web material used in the sling.

Paragraph (i)(8)(i) prohibits the use of repaired synthetic web slings until they have been proof tested by the manufacturer or an equivalent entity. Paragraph (i)(8)(ii) requires the employer to retain a certificate of the proof test and make it available for examination.

The information on the identification tags, markings, and codings assist the employer in determining whether the sling can be used for the lifting task. The sling inspections enable early detection of faulty slings. The inspection and repair records provide employers with information about when the last inspection was made and about the type of the repairs made. This information provides some assurance about the condition of the slings. These records also provide the most efficient means for an OSHA compliance officer to determine that an employer is complying with the Standard. Proof testing certificates give employers, employees, and OSHA compliance officers assurance that slings are safe to use. The certificates also provide the compliance officers with an efficient means to assess employer compliance with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Slings (29 CFR 1910.184). OSHA is proposing to decrease the existing burden hour estimate for the collection of information requirements specified by the Standard from 19,167 hours to 17,760 hours, a total decrease of 1,407 hours. The decrease occurred because, although there was an increase in the total number of slings, there was a decrease in the number of alloy steel chain slings. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Slings (29 CFR 1910.184).

OMB Number: 1218–0223.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 1,000,000.

Frequency of Response: On occasion.

Average Time Per Response: Varies from 1 minute (.02 hour) to maintain a certificate to 30 minutes (.50 hour) for a manufacturing employee to acquire information from a manufacturer for a new tag, make a new tag, and affix it to a sling.

Estimated Total Burden Hours: 17,760.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0020). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional

materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.*, copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''UserTips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on June 12, 2008.

Edwin G. Foulke, Jr.

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–14073 Filed 6–20–08; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0018]

Forging Machines; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Forging Machines Standard (29 CFR 1910.218). The paperwork provisions of the Standard specify requirements for developing and maintaining inspection records, and identifying manually operated valves and switches.

DATES: Comments must be submitted (postmarked, sent, or received) by August 22, 2008.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0018, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2008–0018). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that forging machines used by them are in safe operating condition, and that they are able to clearly and

properly identify manually operated valves and switches.

Inspection of Forging Machines, Guards, and Point-of-Operation Protection Devices (paragraphs (a)(2)(i) and (a)(2)(ii)). Paragraph (a)(2)(i) requires employers to establish periodic and regular maintenance safety checks, and to develop and maintain a certification record of each inspection. The certification record must include the date of inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the forging machine inspected. Under paragraph (a)(2)(ii), employers are to schedule regular and frequent inspections of guards and point-of-operation protection devices, and prepare a certification record of each inspection that contains the date of the inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the equipment inspected. These inspection certification records provide assurance to employers, employees, and OSHA compliance officers that forging machines, guards, and point-of-operation protection devices have been inspected, assuring that they will operate properly and safely, thereby preventing impact injury and death to employees during forging operations. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

Identification of Manually Controlled Valves and Switches (paragraphs (c), (h)(3), (i)(1) and (i)(2)). These paragraphs require proper and clear identification of manually operated valves and switches on presses, upsetters, boltheading equipment, and rivet-making machines, respectively. Marking valves and switches provide information to employees to ensure that they operate the forging machines correctly and safely.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Forging Machines (29 CFR 1910.218). The Agency is requesting to retain its current burden hour estimate of 187,264 hours associated with this Standard. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Forging Machines (29 CFR 1910.218).

OMB Number: 1218–0228.

Affected Public: Business or other for-profits.

Number of Respondents: 27,700.

Frequency: Biweekly.

Average Time per Response: Varies from 2 minutes (.03 hour) for an employer to disclose certification records to 8 minutes (.13 hour) for a manufacturing employee to conduct an inspection of each forging machine and guard or point-of-operation protection device biweekly.

Estimated Total Burden Hours: 187,264.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0018). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.*, copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on June 12, 2008.

Edwin G. Foulke, Jr.

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–14074 Filed 6–20–08; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0038]

Electrical Reliability Services, Inc. (Formerly Electro-Test, Inc.); Denial of Renewal of Recognition

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

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision to deny the renewal of recognition of Electrical Reliability Services, Inc. (formerly Electro-Test, Inc.) (ETI) as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: The denial of recognition is effective on June 23, 2008.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) is giving notice of the denial of renewal of recognition of Electrical Reliability Services, Inc. (formerly Electro-Test, Inc.) (ETI) as a Nationally Recognized Testing Laboratory (NRTL). OSHA is taking this action following its requirements under Subsection I.B. of Appendix A to 29 CFR 1910.7.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7), OSHA's NRTL Program regulations. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products in the workplace that are properly approved by the NRTL to meet OSHA standards that require testing and certification.

Subsection I.B describes the procedures that OSHA must use in deciding an NRTL's application for renewal of recognition. In order to approve such an application, the NRTL must meet all of the requirements for recognition in 29 CFR 1910.7. Subsection I.B sets out the steps OSHA must follow in reviewing each renewal application and provides the NRTL opportunities to correct or respond to any perceived failures to meet the requirements.

OSHA followed the process set forth in Subsection I.B and is denying renewal of ETI as an NRTL. OSHA found that ETI's ownership by Emerson Electric Company resulted in ETI's failure to satisfy the requirement of 29 CFR 1910.7 that NRTLs be independent of the manufacturers and vendors of the products for which OSHA requires certification. This failure constitutes a cause for non-renewal under OSHA's NRTL Program regulations.

OSHA has notified ETI of its final decision to deny its application for renewal. The effective date of non-renewal is shown in the DATES section above. As of this date, the Agency no longer accepts product certifications done by ETI.

Docket No. OSHA–2007–0038 contains all public materials in the record concerning the recognition of ETI. You may obtain or review copies of these documents by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210.

Signed at Washington, DC, this 13th day of June, 2008.

Edwin G. Foulke, Jr.

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–14072 Filed 6–20–08; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

Date: June 19, 2008.

TIME AND DATE: 10 a.m., Wednesday, July 16, 2008.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Spartan Mining Company*, Docket Nos. WEVA 2004–117–RM, *et al.* (Issues include whether the Administrative Law Judge properly found violations and assessed penalties for the following standards: 30 CFR 75.606 (requiring protecting cables); 30 CFR 75.511 (requiring locking and tagging out before electrical work); 30 CFR 75.1725(a) (requiring unsafe equipment to be removed from service); and 30 CFR 75.313(a)(3) (requiring withdrawal from a working section in mine fan outage)).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sandra G. Farrow,

Acting Chief Docket Clerk.

[FR Doc. 08–1377 Filed 6–19–08; 11:15 am]

BILLING CODE 6735–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal AdvisoryCommittee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4) and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 8, 2008.

Time: 9 a.m. to 5 p.m.

Room: 421.

Program: This meeting will review applications for Challenge Grants,

submitted to the Office of Challenge Grants, at the May 1, 2008 deadline.

2. *Date:* July 10, 2008.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Challenge Grants, submitted to the Office of Challenge Grants, at the May 1, 2008 deadline.

3. *Date:* July 15, 2008.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Challenge Grants, submitted to the Office of Challenge Grants, at the May 1, 2008 deadline.

4. *Date:* July 15, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for African and Middle Eastern Studies in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

5. *Date:* July 16, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for British Literature I in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

6. *Date:* July 16, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for British Literature II in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

7. *Date:* July 17, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Philosophy I in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

8. *Date:* July 17, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Philosophy II in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

9. *Date:* July 17, 2008.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Challenge Grants, submitted to the Office of Challenge Grants, at the May 1, 2008 deadline.

10. *Date:* July 21, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Political Science and Jurisprudence in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

11. *Date:* July 21, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Advanced Research on Japan in Fellowships for Advanced Research On Japan, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

12. *Date:* July 22, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Asian Studies I in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

13. *Date:* July 22, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Asian Studies II in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

14. *Date:* July 22, 2008.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Challenge Grants, submitted to the Office of Challenge Grants, at the May 1, 2008 deadline.

15. *Date:* July 28, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Music, History and Theory in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

16. *Date:* July 29, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Germanic and Slavic Studies in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

17. *Date:* July 29, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Comparative Literature in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

18. *Date:* July 29, 2008.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Challenge Grants, submitted to the Office of Challenge Grants, at the May 1, 2008 deadline.

19. *Date:* July 30, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American Literature in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

20. *Date:* July 31, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Sociology, Anthropology, and Psychology in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

21. *Date:* July 31, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Religious Studies in Fellowships, submitted to the Division of Research Programs, at the May 1, 2008 deadline.

Michael P. McDonald,
Advisory Committee Management Officer.

[FR Doc. E8–14057 Filed 6–20–08; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Computing & Communications Foundations; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Panel Review for Computing & Communications Foundations (1192).
Date/Time: July 1–3, 2008 7:30 a.m.–9:30 p.m.
Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Partially-Closed.
Contact Person: Timothy Pinkston, National Science Foundation, 4201 Wilson Boulevard, Room 1115, Arlington, VA 22230. Telephone: (703) 292–8910.
Purpose of Meeting: To provide advice and recommendations concerning Expeditions in Computing proposals submitted to NSF for financial support.

Agenda

Tuesday, July 1

- 7:30 a.m.–11 a.m. Closed session—initial deliberation.
- 11 a.m.–12:30 p.m. Open session—Presentation of Proposal, Question and Answer Session.
- 12:30 p.m.–1 p.m. Break. Closed session—discussion and review.
- 1 p.m.–2 p.m. *Lunch.*
- 2 p.m.–3:30 p.m. Open session—Presentation of Proposal, Question and Answer Session.
- 3:30 p.m.–4 p.m. Break. Closed session—discussion and review panel meets.
- 4 p.m.–5:30 p.m. Open session—Presentation of Proposal. Question and Answer Session.

• 5:30 p.m.–9:30 p.m. Closed session—Discussion and review. Draft recommendations.

Wednesday, July 2

• 7:30 a.m.–8 a.m. Closed session—Review and discussion.
• 8 a.m.–9:30 a.m. Open session—Presentation of Proposal. Question and Answer Session.
• 9:30 a.m.–10 a.m. Break. Closed session—Discussion and review.
• 10 a.m.–11:30 a.m. Open session—Presentation of Proposal. Question and Answer Session.
• 11:30 a.m.–12 p.m. Break. Closed session—Discussion and review.
• 12 p.m.–1 p.m. Lunch.
• 1 p.m.–2:30 p.m. Open session—Presentation of Proposal. Question and Answer Session.
• 2:30 p.m.–3 p.m. Break. Closed session—Discussion and review.
• 3 p.m.–4:30 p.m. Open session—Presentation of Proposal. Question and Answer Session.
• 4:30 p.m.–9:30 p.m. Break. Closed session—Discussion and review, final evaluations and recommendations discussed and written.

Thursday, July 3

• 8 a.m.–4 p.m. Closed session—Deliberations, and evaluations and final recommendations written.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 17, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–14054 Filed 6–20–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on March 28, 2008.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 72, Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste.

3. *Current OMB approval number:* 3150–0132.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur; submittal of reports varies from less than one per year under some rule sections to up to an average of about 100 per year under other rule sections. Applications for new licenses, certificates of compliance (CoCs), and amendments may be submitted at anytime; applications for renewal of licenses are required every 20 years for an Independent Spent Fuel Storage Installation (ISFSI) or Certificate of Compliance (CoC) and every 40 years for a Monitored Retrievable Storage (MRS) facility.

6. *Who will be required or asked to report:* Certificate holders of casks for the storage of spent fuel; licensees and applicants for a CoC or a license to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI; and the Department of Energy for licenses to receive, transfer, package and possess power reactor spent fuel, high-level waste, and other radioactive materials associated with spent fuel and high-level waste storage in an MRS.

7. *An estimate of the number of annual responses:* 370 (320 responses + 50 recordkeepers).

8. *The estimated number of annual respondents:* 50.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 25,551 (22,781 hours for reporting [71 hours per response] and 2,770 hours for recordkeeping [55 hours per recordkeeper]).

10. *Abstract:* 10 CFR Part 72 establishes mandatory requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, as well as requirements for the issuance of licenses to the Department of Energy to receive, transfer, package, and possess power reactor spent fuel and high-level radioactive waste, and other associated radioactive materials in an MRS. The information in the applications, reports, and records is used by NRC to make licensing and other regulatory determinations.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 23, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150–0132), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 17th day of June, 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–14143 Filed 6–20–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an

agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on April 1, 2008.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 536, ''Operator Licensing Examination Data.''

3. *Current OMB approval number:* 3150–0131.

4. *The form number if applicable:* NRC Form 536.

5. *How often the collection is required:* Annually.

6. *Who will be required or asked to report:* All holders of and applicants for operating licenses for commercial nuclear power reactors.

7. *An estimate of the number of annual responses:* 80.

8. *The estimated number of annual respondents:* 80.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 80.

10. *Abstract:* NRC is requesting renewal of its clearance to annually request all commercial power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for initial operator licensing examinations; (2) the estimated dates of the examinations; (3) if the examinations will be facility developed or NRC developed, and (4) the estimated number of individuals that will participate in the Generic Fundamentals Examination (GFE) for that calendar year. Except for the GFE, this information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear power industry.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 23, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150–0131), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 16th day of June, 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–14144 Filed 6–20–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 AND 50–446]

Luminant Generation Company, LLC; Comanche Peak Steam Electric Station, Units 1 and 2; Final Environmental Assessment and Finding of No Significant Impact Related To the Proposed License Amendment To Increase the Maximum Reactor Power Level

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

SUMMARY: As required by Title 10 of the *Code of Federal Regulations* 10 CFR part 51, the NRC has prepared a final Environmental Assessment (EA) associated with its evaluation of a request by the TXU Generation Company, LP (subsequently renamed Luminant Generation Company, LLC, the licensee), for a license amendment to increase the maximum thermal power at the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, from 3458 megawatts thermal (MWt) to 3612 MWt at each unit. The NRC staff did not identify any significant impact from the information provided in the licensee's stretch power uprate (SPU) application for CPSES, Units 1 and 2 or from the NRC staff's independent review. The final EA and Finding of No Significant Impact are being published in the **Federal Register**.

The NRC published a draft EA and finding of no significant impact on the proposed action for public comment in the **Federal Register** on April 30, 2008 (73 FR 23503). No comments were received.

Environmental Assessment

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89, issued to Luminant Generation Company, LLC, for operation of the CPSES, Units 1 and 2, located in Somervell County, Texas. Therefore, consistent with Section 51.21 of Title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is issuing this final EA and finding of no significant impact.

Identification of the Proposed Action

The proposed action would revise the CPSES, Units 1 and 2 operating licenses and technical specifications (TSs) to increase the licensed rated power by 4.5 percent from 3458 MWt to 3612 MWt. The proposed action is in accordance with the licensee's application dated August 28, 2007, as supplemented by letters dated October 24, November 7, and December 3, 2007, January 10, 29, and 31, February 21, 26, and 28, March 6, April 17, and May 14, 2008. The letters dated April 17, and May 14, 2008, were received after issuance of the Draft EA, provided supplemental clarifying information, but did not have any impact on the Draft EA.

The Need for the Proposed Action

The proposed action permits an increase in the licensed core thermal power from 3458 MWt to 3612 MWt for the CPSES, Units 1 and 2, providing the flexibility to obtain a higher electrical output from the CPSES, Units 1 and 2.

Environmental Impacts of the Proposed Action

The licensee has submitted an environmental evaluation supporting the proposed SPU and provided a summary of its conclusions concerning the radiological and non-radiological environmental impacts of the proposed action.

Radiological Impacts

The licensee evaluated the impacts of the proposed SPU on radioactive liquid waste production, processing, discharge into the environment, resultant dose to members of the public, and impact to Squaw Creek Reservoir (SCR). There will be an increase (approximately 6.5 percent for long-lived activity) in the equilibrium radioactivity in the reactor coolant, which in turn will result in a maximum increase of 6.5 percent in the radioactivity content of the liquid releases. Tritium levels are also expected to increase by 6.5 percent in the discharged liquid. This will result in increased aqueous tritium concentrations in the SCR.

The evaluation shows that even with the small increase in the radioactivity being discharged into the environment, the projected dose to the maximally exposed member of the public, while

slightly increased, will remain well below the As Low As Reasonably Achievable (ALARA) criteria in Appendix I to 10 CFR part 50. Also, the tritium concentration levels in SCR will remain well below the reporting limits in the CPSES Offsite Dose Calculation Manual (ODCM), which is based on NRC reporting criteria.

The licensee evaluated the impacts of the proposed SPU on gaseous radioactive wastes. Gaseous radioactive wastes are activation gases and fission product radioactive noble gases, which come from radioactive system leakage, process operations including volume control tank (VCT) venting, gases used for tank cover gas, and gases generated in the radiochemistry laboratory. The evaluation shows that the proposed SPU will not significantly increase the inventory of gases normally processed in the gaseous waste management system. This is based on no change to plant system functions and no change to the gas volume inputs.

The activity of radioactive gaseous nuclides present in the waste gas system will increase as a result of the SPU. This is due to the increased levels of gases in the reactor coolant system and the actions performed in the VCT. However, the operation of the waste gas system will not change and will continue to allow for decay of the short-lived radionuclides. Tritium will remain the largest component of the gaseous effluents, the largest contributor being from evaporation from the Spent Fuel Pools. The proposed SPU will result in an increase (approximately 9.5 percent for noble gases, 6.6 percent (reactor coolant) and 12.6 percent (secondary coolant) for I–131, and 6.5 percent for long-lived activity) in the equilibrium radioactivity in the reactor coolant, which in turn increases the activity in the gaseous waste disposal systems and the activity released into the atmosphere (estimated to increase by 9.5 percent for noble gases, 6.5 percent for particulates including Tritium, and 12.6 percent limiting increase for iodines).

The evaluation shows that even with the small increase in the gaseous radioactivity being discharged into the environment, the projected dose to the maximally exposed member of the public, while slightly increased, will remain well below the ALARA criteria in Appendix I to 10 CFR part 50.

While the SPU will slightly increase the activity level of radioactive isotopes in the reactor coolant system and the volume of radioactive liquid generated from leakage and planned drainage, there will only be a minimal effect on the generation of radioactively contaminated sludge and resin solids processed as radwaste. The currently installed radwaste system and its total volume capacity for handling solid radwaste will not be affected.

For the long-term operation of the plant with the SPU, the dose to an offsite member of the public from the onsite storage of solid radwaste was estimated to increase by approximately 7.2 percent. This is based on several assumptions: (1) The current radwaste decays and its dose contribution decreases; (2) the stored radwaste is routinely moved offsite for disposal; (3) the radwaste generated post SPU enters into storage; and (4) the plant capacity factor approaches the target of 1.0. The radiation dose from direct shine is cumulative based on the waste generated and stored onsite from all units over the plant's lifetime. CPSES ODCM contains the requirements to ensure compliance with the radiation dose limits in 10 CFR part 20 and the Environmental Protection Agency's 40 CFR part 190. Therefore, while a small increase in offsite radiation dose is expected, it will remain within regulatory limits.

The radiation exposure to plant workers from the SPU is expected to be kept to a minimum based on the design features at CPSES, Units 1 and 2, and the Radiation Protection Program. *The design features include:* (1) Shielding, which is provided to reduce levels of radiation; (2) ventilation, which is arranged to control the flow of potentially contaminated air; (3) an installed radiation monitoring system, which is used to measure levels of radiation in potentially occupied areas and measure airborne radioactivity throughout the plant; and (4) respiratory protective equipment, which is used as prescribed by the Radiation Protection Program. The Radiation Protection Program contains procedures for all radiological work performed at CPSES, Units 1 and 2 to ensure doses are maintained ALARA and are in compliance with regulatory limits in 10 CFR part 20.

Non-Radiological Impacts

With regard to potential non-radiological impacts of the proposed SPU, the proposed action does not result in any significant changes to land use or water use. The proposed SPU would increase the temperature of water discharged from the plant at the discharge point, Outfall 001, into the SCR by 1.5 degrees Fahrenheit (°F) and would increase lake evaporation by approximately 6 acre-feet per year. The expected thermal increase would raise the average daily temperature at Outfall 001 from 95.6 °F to 97.1 °F, which remains well below the daily average temperature of 113 °F and daily maximum temperature of 116 °F specified in CPSES Texas Pollution Discharge Elimination System (TPDES) permit. Because this increase remains well below the facility's TPDES permit limits, the NRC staff determined that this increase is not significant, and is bounded by previous analysis of thermal discharge as documented in the Final Environmental Statement related to the operation of CPSES, Units 1 and 2 (September 1981). No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to endangered or threatened species, or to the habitats of endangered or threatened species are expected as a result of the increase in thermal discharge or change in annual lake evaporation. The proposed action does not have a potential to affect any historical or archaeological sites.

The plant will be modified by replacing the high-pressure turbines at both units. All proposed plant changes will occur within the existing buildings, and no proposed equipment upgrades require any additional equipment that will be visible from outside the existing power station. The proposed action will not change the method of generating electricity or the method of handling any influents from the environment or non-radiological effluents to the environment. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the proposed amendment.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. The details of the staff's safety evaluation will be provided in the amendment that will be issued as part of the letter to the licensee approving the amendment to the facility operating licenses and technical specifications.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement related to the operation of CPSES, Units 1 and 2, dated September 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on June 11, 2008, the staff consulted with the Texas State official, Alice Rogers of the Texas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated August 28, 2007, as supplemented by letters dated October 24, November 7, and December 3, 2007, January 10, 29, and 31, February 21, 26, and 28, March 6, April 17, and May 14, 2008. Publicly available records are accessible electronically via the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov.reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send and e-mail to *pdr_Resource@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of June, 2008.

For the Nuclear Regulatory Commission.

Balwant K. Singal,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–14147 Filed 6–20–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for the Review of a Revised Information Collection: Form DPRS–2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. DPRS 2809, Request to Change Federal Employees Health Benefits (FEHB) Enrollment, is used by former spouses and Temporary Continuation of Coverage recipients who are eligible to elect, cancel, or change health benefits enrollment during open season.

Approximately 27,000 DPRS–2809 forms are completed annually. We estimate it takes approximately 45 minutes to complete the forms. The annual burden is 20,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald E. Ostrich, Chief,Program Planning & Evaluation Group,Insurances Services Program,Center for Retirement and Insurance Services,U.S. Office of Personnel Management,1900 E Street, NW., Room 3425,Washington, DC 20415–3650; and

Brenda Aguilar,OPM Desk Officer,Office of Information & Regulatory Affairs,Office of Management and Budget,New Executive Office Building, NW.,Room 10235,Washington, DC 20503.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–14142 Filed 6–20–08; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB No. 3206–0005]

Proposed Collection; Comment Request for Proposed Clearance of Revised Information Collection

Questionnaire for Non-Sensitive Positions, Standard Form 85 (SF 85); Questionnaire for Public Trust Positions, Standard Form 85P (SF 85P); Supplemental Questionnaire for Selected Positions, Standard Form 85PS (SF 85PS); Questionnaire for National Security Positions, Standard Form 86 (SF 86); Continuation Sheet for Questionnaires Sf 85, Sf 85p, and SF 86, Standard Form 86A (SF 86A); and Certification Statement for SF 86 (SF 86C)

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), this notice announces that the U.S. Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for clearance of these information collections:

- Questionnaire for Non-Sensitive Positions, SF 85;
- Questionnaire for Public Trust Positions, SF 85P;
- Supplemental Questionnaire for Selected Positions, SF 85PS;
- Questionnaire for National Security Positions, SF 86;
- Continuation Sheet for Questionnaires SF 85, SF 85P, and SF 85PS, SF 86A;
- Certification Statement for SF 86, SF 86C; and
- Parallel, electronic versions of the SF 85, SF 85P, SF 85PS, and SF 86, including accompanying releases, housed in a system named e-QIP (Electronic Questionnaires for Investigative Processing).

These information collections are completed by applicants for, or incumbents of, Government positions, or positions for the Government under contract, or by military personnel. The collections are used as the basis of information for background investigations to establish that such persons are:

- Suitable for employment or retention in Federal employment;
- Fit based on character and conduct for employment or retention as a contractor;
- Suitable for a public trust position;
- Suitable for or retention in national security positions as defined in 5 CFR 732;
- Eligible for or retention in positions requiring access to classified information under Executive Order 12968;
- Eligible for employment or retention as a Federal employee, Federal contractor or military personnel.

When use is necessary, the SF 86A is used in lieu of blank paper as a continuation of the form with which its use is associated and not for any unique purpose exclusive from the associated form.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper

performance of functions of the U.S. OPM and its Federal Investigative Services Division, which administers background investigations;

• Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology;

• Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology; and

• Ways in which we can enhance the quality, utility, and clarity of the information to be collected.

The SF 85, SF 85P, SF 85PS, SF 86, SF 86A, and SF 86C are completed by both employees of the Federal Government and individuals not employed with the Federal Government, including Federal contractors and military personnel.

Federal employees are defined as those individuals who are employed as civilian or military personnel with the Federal Government. Non-Federal employees include members of the general public and all individuals employed as Federal and military contractors, or individuals otherwise not directly employed by the Federal Government.

It is estimated that 45,100 non-Federal individuals will complete the SF 85 annually. Each form takes approximately 30 minutes to complete. The estimated annual public burden is 22,600 hours.

It is estimated that 87,400 non-Federal individuals will complete the SF 85P annually. Each form takes approximately 60 minutes to complete. The estimated annual burden is 87,400 hours.

It is estimated that 10,600 non-Federal individuals will complete the SF 85PS annually. Each form takes approximately 10 minutes to complete. The estimated annual burden is 1,800 hours.

It is estimated that 190,100 non-Federal individuals will complete the SF 86 annually. Each form takes approximately 120 minutes to complete. The estimated annual burden is 380,200 hours.

It is estimated that 16,000 non-Federal individuals will complete the SF 86A annually. When this continuation form is used, however, no public burden estimate is provided as it is included with the time computed with the associated security questionnaire.

It is estimated that 1,200 non-Federal individuals will complete the SF 86C annually. Each form takes approximately 15 minutes to complete. The estimated annual burden is 300 hours.

The total estimated annual number of responses for all forms in this collection is 350,400. The estimated annual burden is 492,300 hours.

e-QIP (Electronic Questionnaires for Investigations Processing) is a Web-based system application that houses electronic versions or the SF 85, SF 85P, SF 85PS, and SF 86. This internet data collection tool is used in place of and not in addition to the paper versions of these forms. Individuals using e-QIP will enjoy more convenience, faster processing time, and immediate data validation to ensure accuracy of their personal history information. The data requested on these forms is consistent with that requested on their paper counterparts. While e-QIP will significantly enhance the processing of security questionnaires for processing of background investigations, we do not expect an immediate discernable change to the public burden hours from those cited above for identical paper versions of the forms. However, we expect to have separate, estimated figures for publication in the 30-day **Federal Register** Notice.

In FY 2007, the total number of e-QIP users totaled 622,300. This includes 40,000 submitted on the SF 85; 69,000 on the SF 85P; and 513,300 on the SF 86.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Kathy Dillaman, Associate Director, Federal Investigative Services Division, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2H31, Washington, DC 20415.

For Information Regarding Administrative Coordination—Contact: Mary-Kay Brewer, Program Analyst, Operational Policy Group, Federal Investigative Services Division, U.S. Office of Personnel Management, (202) 606–1835.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–14100 Filed 6–20–08; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Reclearance of an Expiring Information Collection: Fingerprint Charts Standard Form 87 (SF 87) and Standard Form 87A (SF 87A), OMB No. 3206–0150

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the U.S. Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for re-clearance of an expiring information collection (Fingerprint Charts SF 87 and SF 87A; OMB No. 3206–0150). The Fingerprint Charts are used in processing fingerprint checks submitted to the Federal Bureau of Investigation (FBI) to assist in determining whether an applicant is suitable for Federal employment or should be granted a security clearance.

The SF 87 and SF 87A are used as a basis of any criminal history check. The SF 87 and SF 87A are completed by respondents for, or incumbents of, Government positions or positions for the Government under contract, or by military personnel. The charts are used as the basis for background investigations to establish that such persons are:

• Suitable for employment or retention in the position;

• Suitable for employment or retention in a public trust position;

• Suitable for employment or retention in a national security position; and

• Eligible for access to classified national security information.

Comments are particularly invited on:

• Whether this information is necessary for the proper performance of functions of the OPM and its Federal Investigative Services Division, which administers background investigations;

• Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology;

• Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology; and

• Ways in which we can enhance the quality, utility, and clarity of the information to be collected.

Federal employees are defined as those individuals who are employed as civilians or military personnel with the Federal Government. Non-Federal employees include members of the general public and all individuals employed as Federal and military contractors, or individuals otherwise not directly employed by the Federal Government.

It is estimated that 363,500 SF 87 or SF 87A inquiries are sent to individuals annually. Each form takes approximately five minutes to complete. The estimated annual burden is approximately 25,979 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Kathy Dillaman, Associate Director,Federal Investigative Services Division,U.S. Office of Personnel Management,1900 E Street, NW., Room 5416,Washington, DC 20415.

For Information Regarding Administrative Coordination—Contact: Mary-Kay Brewer, Program Analyst, Operational Policy Group, Federal Investigative Services Division, U.S. Office of Personnel Management, (202) 606–1835.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–14110 Filed 6–20–08; 8:45 am]

BILLING CODE 6325–53–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under

Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Mary Lamary Acting Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between May 1, 2008, and May 30, 2008. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for May 2008.

Schedule B

No Schedule B appointments were approved for May 2008.

Schedule C

The following Schedule C appointments were approved during May 2008.

Section 213.3303 Executive Office of the President

Council on Environmental Quality

EQGS60021 Special Assistant to the Chairman (Council on Environmental Quality). Effective May 09, 2008.

EQGS00018 Associate Director for Congressional Affairs to the Chairman (Council on Environmental Quality). Effective May 29, 2008.

Office of Management and Budget

BOGS70005 Confidential Assistant to the Associate Director for Legislative Affairs. Effective May 13, 2008.

Office of National Drug Control Policy

QQGS80008 Special Assistant to the Associate Director for the Office of Legislative Affairs. Effective May 14, 2008.

Section 213.3304 Department of State

DSGS69741 Staff Assistant to the Assistant Secretary, Bureau of Educational and Cultural Affairs. Effective May 02, 2008.

DSGS69735 Senior Advisor to the Principal Deputy Assistant Secretary for Counter Proliferation. Effective May 12, 2008.

DSGS69743 Staff Assistant to the Under Secretary for Arms Control and Security Affairs. Effective May 12, 2008.

DSGS69744 Staff Assistant to the Senior Advisor to the Secretary and White House Liaison. Effective May 12, 2008.

DSGS69745 Special Assistant to the Assistant Secretary for International Organizational Affairs. Effective May 13, 2008.

DSGS69742 Office Director to the Principal Deputy Assistant Secretary. Effective May 14, 2008.

Section 213.3305 Department of the Treasury

DYGS00457 Deputy Executive Secretary to the Chief of Staff. Effective May 16, 2008.

Section 213.3306 Department of Defense

DDGS17157 Special Assistant to the Deputy Under Secretary of Defense (Budget and Appropriations Affairs). Effective May 14, 2008.

DDGS17158 Special Assistant to the Director, Department of Defense Office of Legislative Counsel. Effective May 14, 2008.

DDGS17161 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of Defense for Public Affairs. Effective May 30, 2008.

Section 213.3310 Department of Justice

DJGS00297 Counsel to the Assistant Attorney General (Civil Rights). Effective May 02, 2008.

DJGS00103 Counsel to the Associate Attorney General. Effective May 14, 2008.

DJGS00091 Staff Assistant to the Assistant Attorney General (Legislative Affairs). Effective May 16, 2008.

DJGS00088 Deputy Director Scheduling to the Attorney General. Effective May 21, 2008.

Section 213.3311 Department of Homeland Security

DMGS00751 Public Affairs and Press Assistant to the Assistant Secretary for Public Affairs. Effective May 13, 2008.

Section 213.3313 Department of Agriculture

DAGS00941 Press Assistant to the Director of Communications. Effective May 09, 2008.

Section 213.3314 Department of Commerce

DCGS00652 Confidential Assistant to the Director of Public Affairs. Effective May 1, 2008.

DCGS00380 Confidential Assistant to the Under Secretary for International Trade. Effective May 09, 2008.

DCGS00556 Confidential Assistant to the Chief of Staff to the Deputy Secretary. Effective May 09, 2008.

DCGS00688 Confidential Assistant to the Chief of Staff for Market Access and Compliance. Effective May 09, 2008.

DCGS00689 Confidential Assistant to the Director, Executive Secretariat. Effective May 09, 2008.

DCGS00662 Special Assistant to the Deputy Assistant Secretary for

Commuications and Information. Effective May 13, 2008.

DCGS00252 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective May 22, 2008.

DCGS00272 Special Assistant to the Director, Advocacy Center. Effective May 22, 2008.

DCGS00521 Confidential Assistant to the Assistant Secretary and Director General of United States/For Commercial Services. Effective May 22, 2008.

DCGS00569 Confidential Assistant to the Director for Speechwriting. Effective May 22, 2008.

DCGS00653 Deputy Director, Office of Public Affairs to the Director of Public Affairs. Effective May 22, 2008.

DCGS60189 Special Assistant to the Secretary. Effective May 22, 2008.

DCGS00680 Deputy Press Secretary to the Director of Public Affairs. Effective May 29, 2008.

DCGS00342 Chief of Staff for International Trade Administration/Import Administration to the Assistant Secretary for Import Administration. Effective May 29, 2008.

DCGS00383 Confidential Assistant to the Director Advocacy Center. Effective May 29, 2008.

DCGS00398 Special Assistant to the Director Advocacy Center. Effective May 29, 2008.

DCGS00507 Confidential Assistant to the Chief of Staff for Market Access and Compliance. Effective May 29, 2008.

Section 213.3315 Department of Labor

DLGS00089 Director of Field Operations to the Director of Scheduling. Effective May 07, 2008.

DLGS00108 Senior Advance Representative to the Director of Scheduling. Effective May 07, 2008.

Section 213.3317 Department of Education

DBGS00640 Deputy Secretary's Regional Representative to the Deputy Secretary's Regional Representative. Effective May 06, 2008.

DBGS00226 Confidential Assistant to the Special Assistant. Effective May 07, 2008.

DBGS60164 Confidential Assistant to the Senior Advisor to the Under Secretary. Effective May 14, 2008.

DBGS00447 Secretary's Regional Representative, Region 3 to the Deputy Assistant Secretary for External Affairs. Effective May 22, 2008.

DBGS00666 Executive Director, White House Initiative on Tribal Colleges and Universities to the Assistant Secretary for Postsecondary Education. Effective May 22, 2008.

DBGS00283 Special Assistant to the Deputy Assistant Secretary for External Affairs. Effective May 29, 2008.

DBGS00667 Special Assistant to the Assistant Deputy Secretary for Innovation and Improvement. Effective May 29, 2008.

DBGS00668 Associate Assistant Deputy Secretary for Parental Rights to the Assistant Deputy Secretary for Innovation and Improvement. Effective May 29, 2008.

DBGS60112 Confidential Assistant to the Special Assistant. Effective May 29, 2008.

DBGS00394 Confidential Assistant to the Special Assistant. Effective May 30, 2008.

Section 213.3318 Environmental Protection Agency

EPGS08006 Special Assistant to the Associate Administrator for Public Affairs. Effective May 14, 2008.

EPGS06033 Confidential Assistant to the Deputy Administrator. Effective May 16, 2008.

EPGS08003 Press Secretary to the Associate Administrator for Public Affairs. Effective May 21, 2008.

EPGS08004 Deputy Press Secretary to the Associate Administrator for Public Affairs. Effective May 22, 2008.

Section 213.3325 United States Tax Court

JCGS60063 Secretary (Confidential Assistant) to the Chief Judge. Effective May 05, 2008.

JCGS60083 Chambers Administrator to the Chief Judge. Effective May 05, 2008.

JCGS60076 Trial Clerk to the Chief Judge. Effective May 23, 2008.

JCGS60084 Trial Clerk to the Chief Judge. Effective May 23, 2008.

JCGS60085 Trial Clerk to the Chief Judge. Effective May 28, 2008.

Section 213.3327 Department of Veterans Affairs

DVGS60104 Special Assistant to the Secretary of Veterans Affairs. Effective May 22, 2008.

Section 213.3331 Department of Energy

DEGS00649 Special Assistant to the Director, Office of Scheduling and Advance. Effective May 06, 2008.

DEGS00653 Policy Advisor to the Assistant Secretary for Fossil Energy. Effective May 13, 2008.

DEGS00648 Special Assistant and Scheduler to the Secretary to the Director, Office of Scheduling and Advance. Effective May 13, 2008.

DEGS00651 Special Assistant to the White House Liaison. Effective May 16, 2008.

DEGS00654 Senior Policy Advisor to the Assistant Secretary for Policy and International Affairs. Effective May 16, 2008.

DEGS00656 Senior Policy Advisor to the Deputy Secretary of Energy. Effective May 16, 2008.

DEGS00652 Deputy Chief of Staff to the Chief of Staff. Effective May 21, 2008.

DEGS00657 Senior Advisor to the Secretary, Department of Energy. Effective May 22, 2008.

DEGS00659 Special Assistant to the Deputy Assistant Secretary. Effective May 22, 2008.

DEGS00660 Special Assistant to the Assistant Secretary of Energy (Nuclear Energy). Effective May 22, 2008.

DEGS00661 Special Assistant to the Senior Advisor. Effective May 29, 2008.

Section 213.3332 Small Business Administration

SBGS00649 Senior Advisor to the Associate Administrator for Capital Access to the Associate Deputy Administrator for Capital Access. Effective May 22, 2008.

Section 213.3348 National Aeronautics and Space Administration

NNGS00045 Congressional Outreach Program Manager to the Assistant Administrator for Legislative Affairs and Intergovernmental Affairs. Effective May 09, 2008.

NNGS00173 Legislative Intergovernmental Program Manager to the Assistant Administrator for Legislative Affairs and Intergovernmental Affairs. Effective May 09, 2008.

Section 213.3384 Department of Housing and Urban Development

DUGS60286 Staff Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner. Effective May 12, 2008.

Section 213.3394 Department of Transportation

DTGS60313 Director of Governmental Affairs to the Administrator. Effective May 13, 2008.

DTGS60365 Counselor to the Assistant Secretary for Transportation Policy to the Assistant Secretary for Transportation Policy. Effective May 22, 2008.

DTGS60337 Director of Communications to the

Administrator. Effective May 23, 2008.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Howard C. Weizmann,

Deputy Director.

[FR Doc. E8–14150 Filed 6–20–08; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 8–A; OMB Control No. 3235–0056; SEC File No. 270–54.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 8–A (17 CFR 249.208a) is a registration statement for certain classes of securities pursuant to sections 12(b) and 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(b) and 78*l*(g)). Section 12(a) (15 U.S.C. 78*l*(a)) requires securities traded on national exchanges to be registered under the Exchange Act (15 U.S.C. 78a *et seq.*). Section 12(b) establishes the registration procedures. Section 12(g), and Rule 12g–1 (17 CFR 240.12g–1) promulgated thereunder, extended the Exchange Act registration requirements to issuers engaged in interstate commerce, or in a business affecting interstate commerce, and having total assets of $10,000,000 or more and a class of equity security held or record by 500 or more persons. Form 8–A takes approximately 3 hours to prepare and is filed by approximately 1,170 respondents for a total of 3,510 annual burden hours.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

June 16, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14079 Filed 6–20–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, Copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15g–9; SEC File No. 270–325; OMB Control No. 3235–0385.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 15(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Exchange Act'') authorizes the Commission to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative practices in connection with over-the-counter (''OTC'') securities transactions. Pursuant to this authority, the Commission in 1989 adopted Rule 15a–6 (the ''Rule''), which was subsequently redesignated as Rule 15g–9, 17 CFR 240.15g–9. The Rule requires broker-dealers to produce a written suitability determination for, and to obtain a written customer agreement to, certain recommended transactions in low-priced stocks that are not registered on a national securities exchange or authorized for trading on NASDAQ, and whose issuers do not meet certain minimum financial standards. The Rule is intended to prevent the indiscriminate use by broker-dealers of fraudulent, high pressure telephone sales campaigns to sell low-priced securities to unsophisticated customers.

The Commission staff estimates that there are approximately 240 broker-dealers subject to the Rule. The burden of the Rule on a respondent varies widely depending on the frequency with which new customers are solicited. On the average for all respondents, the staff has estimated that respondents process three new customers per week, or approximately 156 new customer suitability determinations per year. We also estimate that a broker-dealer would expend approximately one-half hour per new customer in obtaining, reviewing, and processing (including transmitting to the customer) the information required by Rule 15g–9, and each respondent would consequently spend 78 hours annually (156 customers × .5 hours) obtaining the information required in the rule. We determined, based on the estimate of 240 broker-dealer respondents, that the current annual burden of Rule 15g–9 is 18,720 hours (240 respondents × 78 hours).

In addition, we estimate that if tangible communications alone are used to transmit the documents required by Rule 15g–9, each customer should take: (1) No more than eight minutes to review, sign and return the suitability determination document; and (2) no more than two minutes to either read and return or produce the customer agreement for a particular recommended transaction in penny stocks, listing the issuer and number of shares of the particular penny stock to be purchased, and send it to the broker-dealer. Thus, the total current customer respondent burden is approximately 10 minutes per response, for an aggregate total of 1,560 minutes for each broker-dealer respondent. Since there are 240 respondents, the annual burden for customer responses is 374,400 minutes (1,560 customer minutes per each of the 240 respondents) or 6,240 hours.

In addition, we estimate that, if tangible means of communications alone are used, broker-dealers could incur a recordkeeping burden under Rule 15g–9 of approximately two minutes per response. Since there are approximately 240 broker-dealer respondents and each respondent would have approximately 156 responses annually, respondents would incur an aggregate recordkeeping burden of 74,880 minutes (240 respondents × 156 responses × 2 minutes per response), or 1,248 hours. Accordingly, the aggregate

annual hour burden associated with Rule 15g–9 is 26,208 hours (18,720 hours to prepare the suitability statement and agreement + 6,240 hours for customer review + 1,248 recordkeeping hours).

We recognize that under the amendments to Rule 15g–9, the burden hours may be slightly reduced if the transaction agreement required under the rule is provided through electronic means such as e-mail from the customer to the broker-dealer (*e.g.*, the customer may take only one minute, instead of the two minutes estimated above, to provide the transaction agreement by e-mail rather than regular mail). If each of the customer respondents estimated above communicates with his or her broker-dealer electronically, the total burden hours on the customers would be reduced from 10 minutes to 9 minutes per response, or an aggregate total of 1,404 minutes per respondent (156 customers × 9 minutes for each customer). Since there are 240 respondents, the annual customer respondent burden, if electronic communications were used by all customers, would be approximately 336,960 minutes (240 respondents × 1,404 minutes per each respondent), or 5,616 hours. We do not believe the hour burden on broker-dealers in obtaining, reviewing, and processing the suitability determination would change through use of electronic communications. In addition, we do not believe that, based on information currently available to us, recordkeeping burdens under Rule 15g–9 would change where the required documents were sent or received through means of electronic communication. Thus, if all broker-dealer respondents obtain and send the documents required under the rule electronically, the aggregate annual hour burden associated with Rule 15g–9 would be 25,584 hours (18,720 hours to prepare the suitability statement and agreement + 5,616 hours for customer review + 1,248 recordkeeping hours).

We cannot estimate how many broker-dealers and customers will choose to communicate electronically. If we assume that 50 percent of respondents would continue to provide documents and obtain signatures in tangible form, and 50 percent would choose to communicate electronically in satisfaction of the requirements of Rule 15g–9, the total aggregate hour burden would be 25,896 burden hours ((26,208 aggregate burden hours for documents and signatures in tangible form × 0.50 of the respondents = 13,104 hours) + (25,584 aggregate burden hours for electronically signed and transmitted documents × 0.50 of the respondents = 12,792 hours)).

The broker-dealer must keep the written suitability determination and customer agreement required by the Rule for at least three years. Completing the suitability determination and obtaining the customer agreement in writing is mandatory for broker-dealers who effect transactions in penny stocks and do not qualify for an exemption, but does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: June 16, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14080 Filed 6–20–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request; ''Tell Us How We're Doing!''

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

SEC File No. 270–406; OMB Control No. 3235–0463.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request to approve the collection of information discussed below.

The title of the questionnaire is ''Tell Us How We're Doing!''

The Commission currently sends the questionnaire to persons who have used the services of the Commission's Office of Investor Education and Advocacy. The questionnaire consists mainly of eight (8) questions concerning the quality of services provided by OIEA. Most of the questions can be answered by checking a box on the questionnaire.

The Commission needs the information to evaluate the quality of services provided by OIEA. Supervisory personnel of OIEA use the information collected in assessing staff performance and for determining what improvements or changes should be made in OIEA operations for services provided to investors.

The respondents to the questionnaire are those investors who request assistance or information from OIEA. For 2007, for example, OIEA sent questionnaires to 2,724 investors, and received 571 responses, or about 21 percent.

The total reporting burden of the questionnaire in 2007 was approximately 142 hours and 45 minutes. This was calculated by multiplying the total number of investors who responded to the questionnaire times how long it is estimated to take to complete the questionnaire (571 respondents × 15 minutes = 142 hours and 45 minutes).

Providing the information on the questionnaire is voluntary and responses are kept confidential.

Members of the public should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid Office of Management and Budget control number is displayed.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director and Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to *PRA_mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 16, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14081 Filed 6–20–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on June 26, 2008 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for June 26, 2008 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Adjudicatory matters; and

Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 18, 2008

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14160 Filed 6–20–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on June 25, 2008 at 10 a.m., in the Auditorium, Room L–002.

The subject matters of the Open Meeting will be:

1. The Commission will consider whether to propose rule and form amendments with respect to references in various Commission rules and forms to ratings by Nationally Recognized Statistical Rating Organizations (NRSROs).

2. The Commission will consider whether to issue guidance and an amendment to its rules relating to Organization and Program Management concerning proposed rule changes filed by self-regulatory organizations pursuant to Section 19(b) of the Securities Exchange Act of 1934 and processed by the Division of Trading and Markets.

3. The Commission will consider whether to propose amendments to Exchange Act Rule 15a–6 relating to broker-dealer registration for foreign brokers or dealers engaged in certain U.S. activities.

4. The Commission will consider whether to propose amendments that would define terms related to annuity contracts under the Securities Act of 1933, and whether to propose amendments related to periodic reporting requirements under the Securities Exchange Act of 1934.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 18, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14166 Filed 6–20–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57972; File No. SR–ISE–2008–44]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for Enhanced Sentiment Market Data

June 16, 2008.

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 June 9, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to remove fees for enhanced sentiment market data. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE 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 ISE 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

Pursuant to a filing previously approved by the Commission, the Exchange currently sells on a subscription basis, to both members and non-members, an enhanced sentiment market data offering that is geared primarily to retail investors.[3] This offering is based on the ISE Sentiment Index®, or ISEE®, a calculation that represents an overall view of market sentiment. The ISEE provides an intra-day picture of how investors view stock prices by assessing customers' option

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 53532 (March 21, 2006), 71 FR 15501 (March 28, 2006) (SR–ISE–2005–56) (Notice of Filing of Proposed Rule Change to Establish Fees for Enhanced Sentiment Market Data); 53756 (May 3, 2006), 71 FR 27526 (May 11, 2006) (SR–ISE–2005–56) (Order Approving Proposed Rule Change to Establish Fees for Enhanced Sentiment Market Data) (the ''Initial Filing'').

trading activity. Unlike the traditional put/call ratio, which makes no distinction between customer, market maker or firm transactions, the ISEE measures only opening long customer transactions on the ISE. The ISE updates the current ISEE value hourly during market hours and posts it for free on its Web site.[4]

This retail-oriented enhanced sentiment market data offering is available to on-line investors on a subscription basis and is also offered by third parties that participate in the Exchange's Marketing Alliance program.[5]

The Exchange subsequently also introduced multi-product discounts for subscriptions to this offering.[6]

The Exchange currently also sells on a subscription basis, to both members and non-members, an enhanced sentiment market data offering that is geared primarily to institutional subscribers.[7] This institution-oriented enhanced sentiment market data offering is a data feed that provides a bulk delivery of up to 1,700 ISEE Select values.[8]

The Exchange has now determined, for business reasons, to terminate, effective August 1, 2008, the retail-oriented enhanced sentiment market data offering. Accordingly, the Exchange proposes to remove reference to this product and associated fees from its fee schedule. The Exchange is not proposing to make any changes to the institution-oriented enhanced sentiment market data offering, known as the ISEE Select Data Feed, as that offering will continue to be sold by ISE.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4),[9] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2008–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2008–44 and should be submitted on or before July 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–14060 Filed 6–20–08; 8:45 am]

BILLING CODE 8010–01–P

[4] *http://www.iseoptions.com/marketplace/statistics/sentiment_index.asp.*

[5] When the Commission published the Initial Filing, the Marketing Alliance program was known as the ISE Broker Marketing Alliance, and participation in it was limited to broker-dealers. Following the launch of the ISEE Select market data offering, and in response to the interest the Exchange received from many non-broker-dealers wishing to participate in the Marketing Alliance program, the Exchange subsequently expanded the program by eliminating its limitation to only broker-dealers. *See* Securities Exchange Act Release Nos. 54508 (September 26, 2006), 71 FR 58459 (October 3, 2006) (SR–ISE–2006–44) (Notice of Filing of Proposed Rule Change to Expand the Broker Marketing Alliance to Include Non-Broker-Dealers with Regard to Enhanced Sentiment Market Data Offering); 54704 (November 3, 2006), 71 FR 65859 (November 9, 2006) (SR–ISE–2006–44) (Order Approving Proposed Rule Change to Expand the Broker Marketing Alliance to Include Non-Broker-Dealers with Regard to Enhanced Sentiment Market Data Offering).

[6] *See* Securities Exchange Act Release No. 55288 (February 13, 2007), 72 FR 8219 (February 23, 2007) (SR–ISE–2007–09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Fee Discounts for Enhanced Sentiment Market Data Offering).

[7] *See* Securities Exchange Act Release No. 56315 (August 24, 2007), 72 FR 50148 (August 30, 2007) (SR–ISE–2007–58).

[8] *Id.*

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57977; File No. SR–NASDAQ–2008–052]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Opening of Trading on the NASDAQ Options Market

June 17, 2008.

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 June 12, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. Nasdaq has filed the proposal pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the opening of trading on the NASDAQ Options Market (''NOM'') as set forth in Chapter VI, section 8 of the Nasdaq Rules governing options trading. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and *http://nasdaq.complinet.com*.

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

Nasdaq proposes to modify Chapter VI, section 8 of the rules governing NOM, and in particular governing the opening of trading in that market. Since Nasdaq launched NOM on March 31, 2008, Nasdaq has monitored the operation of the market to identify instances where market efficiency can be enhanced. On May 13, 2008, Nasdaq filed SR–NASDAQ–2008–045, a rule change designed to enhance the opening by delaying the opening until such time as the execution of the Opening Cross or, where no Opening Cross will occur, the opening print is in line with the overall marketplace.[5]

Currently, the opening is delayed if the Nasdaq Best Bid and Offer (''Nasdaq BBO'') after execution of the opening print would be wider than pre-determined authorized trading thresholds as prescribed in the obvious error guidelines set forth in Chapter V, Sec. 6 of the NOM rules. This change has reduced the instances of erroneous trades occurring at the beginning of the trading day.

While Nasdaq believes that the opening of the market is quite effective, it also believes that it can be further enhanced in instances where there is insufficient trading interest to conduct an Opening Cross. Specifically, Nasdaq proposes to allow the opening of trading in those instances where trading interest at the National Best Bid and Offer (''NBBO''), which includes the non-firm Nasdaq BBO, is within the currently authorized trading thresholds. Except for executions arising from the Opening Cross, executions shall only be permitted if they will not result in a trade-through violation of the NBBO as described in Chapter VI, Sec. 7(b)(3)(C) of the NOM rules. Nasdaq believes that this change will allow it to open more series earlier in the trading day without risk of additional erroneous trades.

Nasdaq believes that analyzing both NBBO and Nasdaq BBO when determining to open trading will enhance the opportunities for market participants to execute trades at the beginning of the trading day and encourage the addition of additional potentially executable trading interest.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[6] in general, and with section 6(b)(5) of the Act,[7] in particular, in that it is designed 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. Nasdaq believes that the proposal is consistent with this standard because the proposed rule change is designed to improve execution quality at the critical opening of the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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. To the contrary, Nasdaq believes that by enhancing NOM's opening of trading, the proposed rule change will require competing markets to improve their opening processes and thereby enhance competition between the markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) have the effect of limiting the access to or availability of an existing order entry or trading system of the Exchange, the foregoing rule change has become effective immediately pursuant to section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(5) thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

[5] *See* Securities Exchange Act Release No. 57822 (May 15, 2008), 73 FR 29800 (May 22, 2008).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(5).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–052. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office 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–2008–052 and should be submitted on or before July 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E8–14105 Filed 6–20–08; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57973; File No. SR–NASDAQ–2008–050]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Regarding Nasdaq Last Sale Data Feeds

June 16, 2008.

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 June 2, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On June 12, 2008, Nasdaq submitted Amendment No. 1 to the proposed rule change. The Exchange has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish a one-month free service for those data feeds for which Nasdaq has separately proposed fees on a four-month pilot basis in Amendment No. 2 to SR–NASDAQ–2006–060.[5] Specifically, Nasdaq is proposing to offer the ''Nasdaq Last Sale for Nasdaq'' and ''Nasdaq Last Sale for NYSE/Amex'' data feeds (''Nasdaq Last Sale Data Feeds'') containing last sale activity in U.S. equities within the Nasdaq Market Center and reported to the jointly-operated FINRA/Nasdaq Trade Reporting Facility (''FINRA/Nasdaq TRF'') during the month of June 2008 without charge to data distributors. The availability of the products following June 2008 will be subject to Commission approval of the fees proposed in SR–NASDAQ–2006–060.[6] Accordingly, SR–NASDAQ–2008–050 does not propose fees or charges and will be operative only for June 2008. There is no proposed rule text.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 57965 (June 16, 2008).

[6] *Id.*

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. 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

Currently, investors that wish to view market data to monitor their portfolios generally have two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. In SR–NASDAQ–2006–060, Nasdaq has proposed to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data via the Internet and television at no cost to millions of internet users and television viewers. In Amendment No. 2 to SR–NASDAQ–2006–060, Nasdaq proposes to charge certain fees described in that filing for a four-month pilot period.[7] In SR–NASDAQ–2008–050, Nasdaq proposes to offer free of charge during the month of June 2008 the same data feeds for which Nasdaq has proposed fees on a four-month pilot basis in SR–NASDAQ–2006–060. The availability of the products following June 2008 will be subject to Commission approval of the fees proposed in SR–NASDAQ–2006–060.

Nasdaq proposes to create two separate ''Level 1'' products containing last sale activity within the Nasdaq market and reported to the jointly-operated FINRA/Nasdaq TRF. First, the Nasdaq Last Sale for Nasdaq data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the Nasdaq system as well as those reported to the FINRA/Nasdaq TRF. Second, Nasdaq will also create the Nasdaq Last Sale for NYSE/Amex data product that provides real-time last sale information

[7] *Id.*

including execution price, volume, and time for NYSE- and Amex-securities executions occurring within the Nasdaq system as well as those reported to the FINRA/Nasdaq TRF.

Nasdaq developed these product proposals in consultation with industry members and also market data vendors and purchasers. These products are designed to meet the needs of current and prospective subscribers that do not need or are unwilling to pay for the consolidated data provided by the SIP Level 1 products. Nasdaq also proposes to ease the administrative burden of market data vendors that are receiving and using data in new ways, particularly those that provide the data via the Internet and various television media. Nasdaq believes that providing investors with new options for receiving market data, as Nasdaq proposes, was a primary goal of the market data amendments adopted in Regulation NMS. Nasdaq believes that by offering the data feeds without charge during the month of June 2008, it will demonstrate the value of these products to data distributors and investors.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(5) of the Act,[9] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Nasdaq believes that the Nasdaq Last Sale Data Feeds proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

Nasdaq has concluded that offering these products without charge for a one-month period will help to demonstrate the value of the products to distributors and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Three comment letters were filed regarding SR–NASDAQ–2006–060 as originally published for comment. Nasdaq responded to these comments in a letter dated December 13, 2007. Both the comment letters and Nasdaq's response are available on the Commission's Web site at *http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml*.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow Nasdaq to distribute free of charge its Nasdaq Last Sale Data Feeds for the month of June 2008 without further delay. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–050. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested the Commission to waive this five-day pre-filing notice requirement. The Commission hereby grants this request.

[13] *Id.*

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on June 16, 2008, the date on which the Exchange submitted Amendment No. 1.

available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–2008–050 and should be submitted on or before July 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E8–14104 Filed 6–20–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]In the Matter of:

Kafus Industries, Ltd., Kevco, Inc., andKings Road Entertainment, Inc.; Order of Suspension of Trading

June 19, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Kafus Industries, Ltd. because it has not filed any periodic reports since the period ended December 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Kevco, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Kings Road Entertainment, Inc. because it has not filed any periodic reports since the period ended April 30, 2005.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EDT on June 19, 2008, through 11:59 p.m. EDT on July 2, 2008.

[16] 17 CFR 200.30–3(a)(12).

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 08–1376 Filed 6–19–08; 9:53 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11286 and #11287]

Indiana Disaster Number IN–00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1766–DR), dated 06/11/2008.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 05/30/2008 and continuing.

EFFECTIVE DATE: 06/16/2008.

Physical Loan Application Deadline Date: 08/11/2008.

EIDL Loan Application Deadline Date: 03/11/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road,Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Indiana, dated 06/11/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Decatur, Wayne.

Contiguous Counties: (Economic Injury Loans Only):

Indiana: Union.

Ohio: Preble.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–14092 Filed 6–20–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11292]

GEORGIA Disaster #GA–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of GEORGIA (FEMA–1761–DR), dated 05/23/2008.

Incident: Severe Storms and Flooding.

Incident Period: 05/11/2008 through 05/12/2008.

Effective Date: 05/23/2008.

Physical Loan Application Deadline Date: 07/22/2008.

ADDRESSES: Submit completed loan applications to:U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road,Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance,U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/23/2008, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*Bibb, Carroll, Crawford, Douglas, Emanuel, Glynn, Jefferson, Jenkins, Johnson, Laurens, McIntosh, Treutlen, Twiggs, Wilkinson.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11292.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–14109 Filed 6–20–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11290]

Montana Disaster # MT–00038

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Montana (FEMA–1767–DR), dated 06/13/2008.

Incident: Severe Winter Storm.

Incident Period: 05/01/2008 through 05/02/2008.

EFFECTIVE DATE: 06/13/2008.

Physical Loan Application Deadline Date: 08/12/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/13/2008, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Carter, Custer, Fallon, Powder River.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11290.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–14093 Filed 6–20–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11291]

Oklahoma Disaster #OK–00021

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1752–DR), dated 05/05/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/17/2008 through 03/23/2008.

EFFECTIVE DATE: 05/05/2008.

Physical Loan Application Deadline Date: 07/07/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/05/2008, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Adair, Haskell, Hughes, Latimer, Le Flore, Mayes, Mccurtain, Mcintosh, Muskogee, Okfuskee, Okmulgee, Pittsburg, Pushmataha, Sequoyah.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11291.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera.

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–14091 Filed 6–20–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11288 and #11289]

Wisconsin Disaster Number WI–00013

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1768–DR), dated 06/14/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/05/2008 and continuing.

EFFECTIVE DATE: 06/16/2008.

Physical Loan Application Deadline Date: 08/13/2008.

EIDL Loan Application Deadline Date: 03/13/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Wisconsin, dated 06/14/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Racine, Richland.

Contiguous Counties: (Economic Injury Loans Only):

Wisconsin: Kenosha, Walworth.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–14094 Filed 6–20–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver of the Nonmanufacturer Rule for Other Aircraft Parts and Auxiliary Equipment Manufacturing (Drones and Aircraft Launching Equipment), Product Service Codes 1550 and 1720.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Other Aircraft Parts and Auxiliary Equipment Manufacturing (Drones and Aircraft Launching Equipment).

The basis for waiver is that no small business manufacturers are supplying this class of product to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATE: This waiver is effective July 8, 2008.

FOR FURTHER INFORMATION CONTACT: Pamela M. McClam, Program Analyst, by telephone at (202) 205–7408; by FAX at (202) 481–4783; or by e-mail at *Pamela.McClam@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six-digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code required as a data entry field by the Federal Procurement Data System.

The SBA received a request on May 2, 2008, to waive the Nonmanufacturer Rule for Other Aircraft Parts and Auxiliary Equipment Manufacturing (Drones, Miscellaneous Aircraft Accessories and Components, and Aircraft Launching Equipment).

In response, on May 16, 2008, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Other Aircraft Parts and Auxiliary Equipment Manufacturing (Drones and Aircraft Launching Equipment). SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. One comment was received regarding our intent to waive Miscellaneous Aircraft Accessories and Components, Product Service Code 1680. Based on the information in that comment, SBA has determined that there are small business manufacturers of Product Service Code 1680 and will not be granting a waiver. No comments were received regarding Product Service Codes 1550 and 1720, therefore SBA is granting the waiver of the Nonmanufacturer Rule for Other Aircraft Parts and Auxiliary Equipment Manufacturing (Drones and Aircraft Launching Equipment) NAICS code 336413, Product Service Codes 1550 and 1720.

Authority: 15 U.S.C. 637(a)(17).

Karen Hontz,

Director for Government Contracting.

[FR Doc. E8–14116 Filed 6–20–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6273]

60-Day Notice of Proposed Information Collection: Form DS–3083, Training Registration (for Non-U.S. Government Persons), OMB Control No. 1405–0145

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Training Registration (for Non-U.S. Government Persons).
- *OMB Control Number:* 1405–0145.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Foreign Service Institute, FSI/EX.
- *Form Number:* DS–3083.
- *Respondents:* Respondents are non-U.S. government persons and/or their eligible family members, authorized by Public Law 105–277 to receive training delivered by the Foreign Service Institute on a reimbursable or advance-of-funds basis.
- *Estimated Number of Respondents:* 100.
- *Estimated Number of Responses:* 100.
- *Average Hours per Response:* 0.5.
- *Total Estimated Burden:* 50.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from June 23, 2008.

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

- E-mail: *oshimawa@state.gov.*
- Mail (paper, disk, or CD–ROM submissions): Foreign Service Institute, Office of Management, U.S. Department of State, Washington, DC 20522–4201.
- Fax: 703–302–7227.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Wayne A. Oshima, Foreign Service Institute, Office of Management, U.S. Department of State, Washington, DC 20522–4201, who may be reached on 703–302–6730 or at *oshimawa@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

This data collection tool is to be used to obtain information from non-U.S. Government persons so that they can enroll in courses offered by the

Department of State's Foreign Service Institute. This includes information of a personal and business nature, and credit card information so that the Department can receive reimbursement.

Methodology

This information will be collected in hard copy format, which is either mailed or transmitted by facsimile machine to the Foreign Service Institute.

Dated: June 9, 2008.

Catherine J. Russell,

Executive Director,Foreign Service Institute,Department of State.

[FR Doc. E8–14132 Filed 6–20–08; 8:45 am]

BILLING CODE 4710–34–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 16, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations. (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2008–0127.

Date Filed: May 14, 2008.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: May 30, 2008.

Description: Application of Kalitta Air, L.L.C. (Kalitta) for (1) a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of property and mail between a point or point(s) in the United States and a point or point(s) in China, via intermediate points, and beyond China to any point or points; (2) designation as the additional U.S.-flag all-cargo carrier permitted effective March 25, 2009; and (3) allocation of 10 of the 15 all-cargo frequencies that become available March 25, 2009.

Docket Number: DOT–OST–2008–0162.

Date Filed: May 15, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 5, 2008.

Description: Joint Application of Delta Air Lines, Inc. (''Delta''), Northwest Airlines, Inc. (''Northwest'') and Northwest's wholly-owned subsidiaries, Compass Airlines, Inc. (''Compass'') and Mesaba Aviation, Inc. (''Mesaba'') (collectively, the ''Joint Applicants'') requesting that the Department transfer all of the certificates of public convenience and necessity, exemptions, statements of authorizations, frequency allocations, designations and related authorities held by Northwest, Compass, and Mesaba. The Joint Applicants also request the Department's approval of the final transfer of international authority that will occur upon the ultimate merger of Delta and Northwest.

Renee V. Wright,

Program Manager, Docket Operations,Federal Register Liaison.

[FR Doc. E8–14127 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Surface Transportation Environment and Planning Cooperative Research Program (STEP)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Section 5207 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established the Surface Transportation Environment and Planning Cooperative Research Program (STEP). The general objective of the STEP is to improve understanding of the complex relationship between surface transportation, planning, and the environment. SAFETEA–LU provides $16.875 million per year for fiscal years (FY) 2006–2009 to implement this new cooperative research program. The STEP is the primary source of funds to conduct all Federal Highway Administration research on planning and environmental issues. In addition, Congress mandated several special studies and STEP will be the funding source for those projects.

The purpose of this notice is to announce revisions to the STEP implementation strategy for FY 2009 and to request suggested lines of research for the FY 2009 STEP via the STEP Web site at *http://www.fhwa.dot.gov/hep/step/index.htm.*

DATES: Suggestions for lines of research should be submitted to the STEP Web site on or before September 22, 2008.

FOR FURTHER INFORMATION CONTACT: Felicia Young, Office of Interstate and Border Planning, (202) 366–1263, *Felicia.young@fhwa.dot.gov;* or Wil Baccus, Office of the Chief Counsel, (202) 366–1396; Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the **Federal Register**'s home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov.*

Background

Section 5207 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, Aug. 10. 2005), established the Surface Transportation Environment and Planning Cooperative Research Program. The STEP is a new cooperative research program for environment and planning research created in section 507 of Title 23, United States Code, Highways (23 U.S.C. 507). The general objective of the STEP is to improve understanding of the complex relationship between surface transportation, planning, and the environment.

SAFETEA–LU established five priority areas for STEP research. These priority funding areas include: (1) Develop more accurate models for evaluating transportation control measures and system designs for use by State and local governments to meet environmental requirements; (2) improve understanding of transportation demand factors; (3) develop indicators of economic, social, and environmental performance of transportation systems to facilitate alternatives analysis; (4) meet additional priorities as determined by the Secretary in the strategic planning process identified in section 5208 of SAFETEA–LU; and (5) refine the scope and research emphases through outreach and in consultation with stakeholders.

Congestion reduction also has been identified as a priority research area for the strategic planning process identified in section 5208 of SAFETEA–LU and is a key element of other STEP priority research areas. Therefore, in addition to the aforementioned research priorities, the STEP will also address research

priorities related to congestion reduction.

Transportation system congestion is one of the single largest threats to U.S. economic prosperity and the American way of life. In response to the challenges of congestion, in May 2006, the DOT established the National Strategy to Reduce Congestion on America's Transportation Network (the ''Congestion Initiative'').[1] The Congestion Initiative is a bold and comprehensive national program to reduce congestion on the Nation's roads, rails, runways and waterways.

Traffic congestion affects virtually every aspect of peoples' lives—where people live, where they work, where they shop, and how much they pay for goods and services. According to 2005 figures, in certain metropolitan areas the average rush hour driver loses as many as 72 hours per year to travel delay—equivalent to almost 2 weeks of work, amounting annually to a virtual ''congestion tax'' as high as $1,374 per traveler in wasted time and fuel.[2] Nationwide, congestion imposes costs on the economy of over $78 billion per year,[3] more than a five-fold increase since 1982, and that would be even higher if it accounted for the significant cost of unreliability to drivers and businesses, the environmental impacts of idle related auto emissions, or increased gasoline prices.

The STEP directly addresses congestion reduction efforts as part of the Planning Focus Area. Other STEP emphasis areas include goals and objectives that relate to congestion reduction. These include: Congestion; Air Quality and Global Climate Change, Bicycle/Pedestrian and Health, Environmental Streamlining/Stewardship; United States/Canada and United States/Mexico Border Planning; Safety Planning; Freight Planning; Travel Modeling, etc. In addition, the STEP outreach efforts continue to seek partnerships that can leverage limited research funding with other stakeholders and partners in order to increase the total amount of funding available to meet the Nation's surface transportation research needs including congestion reduction.

SAFETEA–LU provides $16.875 million per year for FY 2006–2009 to implement this new cooperative research program. Due to obligation limitations, rescissions, and congressional designation of Title V Research in SAFETEA–LU, it is anticipated that approximately $12 million of the $16.875 million authorized will be available each fiscal year.

The FHWA is issuing this notice to: (1) to announce revisions to the STEP Implementation Strategy for the FY 2009 STEP, and (2) to solicit comments via the STEP Web site on proposed research activities to be undertaken in the FY 2009 STEP. The STEP Implementation Strategy was revised to: Update information on the graph and chart regarding historical planning and environment research funding, and to add information about the proposed FY 2009 STEP including proposed funding levels, goals and potential research activities.

Suggested lines of research activities for the FY 2009 STEP may include potential research ideas related to highway safety and the Congestion Initiative. Research activities related to the Congestion Initiative could specifically include ideas to relieve urban congestion; improve analysis tools for measuring and analyzing environmental impacts of congestion management projects; enhance national data resources on operational and environmental effects of congestion management projects; unleash private sector investment resources; promote operational and technological improvements; and target major freight bottlenecks and expand freight policy outreach.

We invite the public to visit this Web site to obtain additional information on the STEP, as well as information on the process for forwarding comments to the FHWA regarding the STEP implementation plan. The URL for the STEP Web site is *http://www.fhwa.dot.gov/hep/step/index.htm.* The FHWA will use this Web site as a major mechanism for informing the public regarding the status of the STEP.

Authority: Section 5207 of Pub. L. 109–59.

Issued on: June 11, 2008.

James D. Ray,

Acting Federal Highway Administrator.

[FR Doc. E8–14135 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–22–P

[1] Speaking before the National Retail Federation's annual conference on May 16, 2006, in Washington, DC, former U.S. Transportation Secretary Norman Mineta unveiled a new plan to reduce congestion plaguing America's roads, rails, and airports. The National Strategy to Reduce Congestion on America's Transportation Network includes a number of initiatives designed to reduce transportation congestion. The transcript of these remarks is available at: *http://www.dot.gov/affairs/minetasp051606.htm.* Additional information may be located at: *http://www.fightgridlocknow.gov.*

[2] Texas Transportation Institute (TTI, 2007 Urban Mobility Report, September 2007 (*http://tti.tamu.edu/documents/mobility_report_2007_wappx.pdf*, Table 1; and *http://mobility.tamu.edu/ums/congestion_data/tables/los_angeles.pdf*), Tables 1 and 2.

[3] TTI, 2007 Urban Mobility Report, p. 1.

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2008–0034]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: 49 U.S.C. Section 5330—Rail Fixed Guideway Systems, State Safety Oversight.

DATES: Comments must be submitted before August 22, 2008.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

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

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete

Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Levern McElveen, Safety Team Leader, Office of Safety and Security, (202) 366–1651, or e-mail: *Levern.McElveen@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: 49 U.S.C. Section 5330—Rail Fixed Guideway Systems, State Safety Oversight (*OMB Number: 2132–0558*).

Background: 49 U.S.C. Section 5330 requires States to designate a State Safety Oversight (SSO) agency to oversee the safety and security of each rail transit agency within the State's jurisdiction. To comply with Section 5330, SSO agencies must develop program standards which meet FTA's minimum requirements. In the Program Standard, which must be approved by FTA, each SSO agency must require each rail transit agency in the State's jurisdiction to prepare and implement a System Safety Program Plan (SSPP) and System Security Plan (SSP). The SSO agency also requires the rail transit agencies in its jurisdiction to conduct specific activities, such as accident investigation, implementation of a hazard management program, and the management of an internal safety and security audit process. SSO agencies review and approve the SSPPs and SSPs of the rail transit agencies. Once every three years, States conduct an on-site review of the rail transit agencies in their jurisdictions to assess SSPP/SSP implementation and to determine whether these plans are effective and if they need to be updated. SSO agencies develop final reports documenting the findings from these on-site reviews and require corrective actions. SSO agencies also review and approve accident investigation reports, participate in the rail transit agency's hazard management program, and oversee implementation of the rail transit agency's internal safety and security audit process. SSO agencies review and approve corrective action plans and track and monitor rail transit agency activities to implement them.

Collection of this information enables each SSO agency to monitor each rail transit agency's implementation of the State's requirements as specified in the Program Standard approved by FTA. Without this information, States would not be able to oversee the rail transit agencies in their jurisdictions. Recent recommendations from the National Transportation Safety Board (NTSB) and the Government Accountability Office (GAO) have encouraged States and rail transit agencies to devote additional resources to these safety activities and safety oversight in general.

SSO agencies also submit an annual certification to FTA that the State is in compliance with Section 5330 and an annual report documenting the State's safety and security oversight activities. FTA uses the annual information submitted by the States to monitor implementation of the program. If a State fails to comply with Section 5330, FTA may withhold up to five percent of the funds appropriated for use in a State or urbanized area in the State under section 5307. The information submitted by the States ensures FTA's compliance with applicable federal laws, OMB Circular A–102, and 49 CFR Part 18, ''Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments.''

Respondents: State and local government agencies.

Estimated Annual Burden on Respondents: Annually, each designated SSO agency devotes approximately 767 hours to information collection activities for each of the rail transit agencies in the State's jurisdiction. Combined, the SSO agencies spend approximately 33,770 hours on information collection activities each year, or roughly half of the total level of effort devoted to implement Section 5330 requirements in a given year. The local governments affected by Section 5330, including the rail transit agencies, spend an annual total of 108,623 hours on information collection activities to support implementation of Section 5330, or approximately 2,469 hours each. This amount also equals approximately half of the total level of effort devoted to implement Section 5330 requirements in a given year.

Estimated Total Annual Burden: 142,393 hours.

Frequency: Annual.

Issued: June 16, 2008.

Ann M. Linnertz,

Associate Administrator for Administration.

[FR Doc. E8–14050 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2007–28505]

Pipeline Safety: Requests for Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: The Federal pipeline safety laws allow a pipeline operator to request PHMSA to waive compliance with any part of the Federal pipeline safety regulations by granting a special permit to the operator. PHMSA is publishing this notice to provide a list of special permit requests we have received from pipeline operators seeking relief from compliance with certain pipeline safety regulations. This notice seeks public comment on these requests, including comments on any environmental impacts. At the conclusion of the comment period, PHMSA will evaluate each request individually to determine whether to grant or deny a special permit.

DATES: Submit any comments regarding any of these special permit requests by July 23, 2008.

ADDRESSES: Comments should reference the docket number for the special permit request and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* DOT Docket Management System; U.S. Department

of Transportation, Docket Operations, M–30, 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.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Lemoi by telephone at (404) 832–1160; or, e-mail at *wayne.lemoi@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA has filed in the Federal Docket Management System (FDMS) requests for special permits we have received from pipeline operators seeking relief from compliance with certain pipeline safety regulations. Each request has been assigned a separate docket number in the FDMS. We invite interested persons to participate by reviewing these special permit requests and by submitting written comments, data or other views. Please include any comments on environmental impacts granting the special permit may have.

Before acting on any special permit request, PHMSA will evaluate all comments received on or before the comment closing date. We will consider comments received after this date if it is possible to do so without incurring additional expense or delay. We may grant a special permit or deny a request based on the comments we receive.

PHMSA has received the following special permit requests.

Docket No.	Requester	Regulation(s)	Nature of special permit
PHMSA–2008–0139	Aker Kvaerner IHI Gulf (Aker Gulf).	49 CFR 193.2301	To authorize Aker Gulf to use automatic ultrasonic examination to inspect liquefied natural gas (LNG) storage tank welds in lieu of radiography during construction of the Gulf Clean Energy, LNG Re-gasification Terminal in Jackson County, Mississippi.
PHMSA–2008–0140	Cascade Natural Gas Corporation (Cascade).	49 CFR 192.745	To authorize Cascade to operate the KB Pipeline in Cowlitz County, Washington, and Columbia County, Oregon, from May 1, 2008, to October 1, 2009, without partially operating certain PBV trunnion mounted ball valves during the required annual inspections. Cascade will use alternate inspection methods until a root cause investigation is completed on the failure of a similar valve in another pipeline operator's system.
PHMSA–2008–0141	Northern Natural Gas Company (NNG).	49 CFR 192.635(b)	To authorize NNG to operate a 2-mile natural gas transmission pipeline segment near Harrisburg, South Dakota, without injecting odorant into the gas.
PHMSA–2008–0143	Southern LNG, Inc. (SLNG)	49 CFR 193.2301	To authorize SLNG to use ultrasonic examination to inspect LNG storage tank welds in lieu of radiography during expansion of the Elba Island LNG storage facility near Savannah, Georgia.
PHMSA–2008–0154	Iroquois Gas Transmission System (Iroquois).	49 CFR 192.1, 11, 192.145, 192.201, 192.503, 192.505, 192.611, and 192.619.	To authorize Iroquois to immediately increase the maximum allowable operating pressure (MAOP) of its entire pipeline system in the United States from 1,440 psig to 1,480 psig and after specific materials upgrades to increase the MAOP to 1,600 psig. This would result in the system operating up to 80% of the specified minimum yield strength (SMYS) in Class 1 locations, 67% SMYS in Class 2 locations, and 56% SMYS in Class 3 locations. This request applies to the 30-inch and 24-inch diameter mainline from Waddington, NY, to South Commack, NY, and to Hunts Point in New York City, including all meter stations, lateral pipelines to customer delivery points, compressor stations and all appurtenant pipeline and station facilities. Iroquois also requests the Special Permit to apply to facilities currently certificated and proposed to be in-service in 2008 and 2009 at locations in Dover, NY, Brookfield, CT, Newtown, CT and Milford, CT.
PHMSA–2008–0156	TransCanada Pipelines Limited (TransCanada).	49 CFR 192.611	To authorize TransCanada to operate 17 segments along Line "A" in Boundary, Bonner, Kootenai, Spokane, Walla Walla, Umatilla, Morrow, Deschutes, and Klamath Counties in Idaho, Oregon and Washington without reducing the operating pressure as a result of changes from Class 1 and Class 2 to Class 3 locations.
PHMSA–2008–0157	TransCanada Pipelines Limited (TransCanada).	49 CFR 192.611	To authorize TransCanada to operate two segments along Line "A" in Boundary and Kootenai Counties, Idaho, without reducing the operating pressure as a result of changes from Class 1 to Class 3 locations.

Docket No.	Requester	Regulation(s)	Nature of special permit
PHMSA–2008–0158	Texas Gas Transmission, LLC (Texas Gas).	49 CFR 192.611	To authorize Texas Gas to operate 2 segments on 2 parallel gas pipelines in Iberia Parish, LA, without reducing operating pressure as a result of changes from Class 1 to Class 3 locations.
PHMSA–2008–0159	Texas Gas Transmission, LLC (Texas Gas).	49 CFR 192.611	To authorize Texas Gas to operate 4 segments on 3 parallel gas pipelines in Graves County, KY, without reducing operating pressure as a result of changes from Class 1 or Class 2 to Class 3 locations.
PHMSA–2008–0163	Transwestern Pipeline Company, L.L.C. (Transwestern).	49 CFR 192.1, 11, and 192.201.	To authorize Transwestern to design, construct and operate the San Juan NPS 36 loop expansion project (San Juan Stitches) near Gallup, NM, at up to 80% SMYS in Class 1 locations, 67% SMYS in Class 2 locations, and 56% SMYS in Class 3 locations.

Authority: 49 U.S.C. 60118(c)(1) and 49 CFR 1.53.

Issued in Washington, DC on June 17, 2008.

Alan Mayberry,

Director, Engineering and Emergency Support.

[FR Doc. E8–14117 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2008–0161]

Pipeline Safety: Workshop on Cased Pipeline Integrity Assessments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of workshop.

SUMMARY: PHMSA is holding a Workshop on Cased Pipeline Integrity Assessments and in coordination with a planning group representing the National Association of Pipeline Safety Regulators, American Gas Association, Interstate Natural Gas Association of America, American Public Gas Association, American Petroleum Institute, and NACE International, the workshop focus will be for pipeline operators, trade associations, and others to address concerns with successfully using External Corrosion Direct Assessment integrity evaluation methods and use of other technologies to assess casings in High Consequence Areas.

DATES: The workshop will be held July 15–16, 2008.

ADDRESSES: The workshop will be held at the Sheraton Gateway Suites Chicago O'Hare, 6501 North Manheim Road, Rosemont, IL 60018. Hotel reservations under the U.S. Department of Transportation room block can be made at (847) 699–6300 by June 30. A daily rate of $168.00 is available. The meeting room(s) will be posted at the hotel on the days of the workshop.

FOR FURTHER INFORMATION CONTACT: Max Kieba at (202) 493–0595, or by e-mail at *max.kieba@dot.gov.*

SUPPLEMENTARY INFORMATION:

Registration: Members of the public may attend this free workshop. To help with estimating attendance and planning for the breakout session, all attendees are encouraged to register for the workshop at *http://primis.phmsa.dot.gov/meetings/Mtg54.mtg.* Hotel reservations must be made by contacting the hotel directly.

Comments should reference Docket ID PHMSA–08–0161. Comments may be submitted in the following ways:

- *E-Gov Web Site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* DOT Docket Management System, Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the Docket ID at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.* Note: Comments will be posted without changes or edits to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act heading in the Regulatory Analyses and Notices section of the **SUPPLEMENTARY INFORMATION** for additional information.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477).

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Max Kieba by July 1, 2008.

Web Casting: The workshop will be Web cast except for the breakout sessions on the second day. Information on the Web cast link, including estimates of times when the Web cast will be on, will be posted on the meeting Web site above. Presentations from the workshop and recommendations from the breakout sessions will be uploaded to the meeting Web site within 30 days after the workshop.

Additional Information on Cased Crossings: The meeting Web site will have a list of technical documents participants are encouraged to review prior to the workshop, along with a list of questions and issues we will address during the workshop.

Workshop Agenda

The first day of the workshop will include:

(1) A background of the regulatory integrity requirements,

(2) Technical updates by both operators and service providers,

(3) Overview of research of new technology, inspection issues and the current integrity inspection positions,

(4) Status of the stakeholders represented followed by panels presenting and discussing current NACE standards,

(5) Approaches and assessment methodologies being used for cased pipeline segments, and

(6) Research completed or underway.

The second day of the workshop will include:

(1) Breakout sessions on the above topics, followed by the group convening to talk about technical assessment successes,

(2) New technology,

(3) New integrity assessment approaches,

(4) Status update of assessments, and

(5) Long term issues.

The second day will also serve as a brainstorm session for identifying discussion topics/issues that should be incorporated into a future public workshop on the broader issue of how pipeline industry can work collaboratively with others to reduce the need for casings on newly installed pipe.

The goal at the end of the workshop will be to develop a list of potential solutions that can address the issues through usage of new technology, understanding of and/or changes to the regulations, updating of standards, operating practices and/or research. PHMSA will then analyze the list of potential solutions with stakeholders for consideration on which solutions can best address the issues.

Issued in Washington, DC, on June 18, 2008.

William H. Gute,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. E8–14119 Filed 6–20–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub–No. 5) (2008–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the third quarter 2008 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter 2008 RCAF (Unadjusted) is 1.147. The third quarter 2008 RCAF (Adjusted) is 0.527. The third quarter 2008 RCAF–5 is 0.500.

DATES: *Effective Date:* July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov*. To purchase a copy of the full decision, write to, e-mail or call the Board's contractor, ASAP Document Solutions; 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net*; phone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

By the Board, Chairman Nottingham, Vice Chairman Mulvey and Commissioner Buttrey.

Decided: June 17, 2008.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–14075 Filed 6–20–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (SAR)]

SAR Application; Correction

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a collection of information notice in the **Federal Register** on June 12, 2008, that contained an error. The notice incorrectly stated that the ''Veterans Health Administration'' had submitted a collection of information to the Office of Management and Budget (OMB) for review and comment. This document corrects the error to reflect that the ''Veterans Benefits Administration'' submitted the collection of information to OMB for review and comment.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at 202–461–7485.

Correction

In FR Doc. E8–13245, published on June 12, 2008, at 73 FR 33497, make the following correction. On page 33497, in the third column, at the Agency heading remove ''Veterans Health Administration'' and add, in its place, ''Veterans Benefits Administration'', and in the Summary remove ''Veterans Health Administration (VHA)'' and add, in its place, ''Veterans Benefits Administration (VBA)''.

Dated: June 17, 2008.

William F. Russo,

Director of Regulations Management.

[FR Doc. E8–14089 Filed 6–20–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
June 23, 2008

Part II

Securities and Exchange Commission

17 CFR Parts 230, 232, 239, et al. Interactive Data for Mutual Fund Risk/Return Summary; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 270, and 274

[Release Nos. 33–8929, 34–57942, 39–2457, IC–28298; File Number S7–12–08]

RIN 3235–AK13

Interactive Data for Mutual Fund Risk/Return Summary

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing rules requiring mutual funds to provide risk/return summary information in a form that would improve its usefulness to investors. Under the proposed rules, risk/return summary information could be downloaded directly into spreadsheets, analyzed in a variety of ways using commercial off-the-shelf software, and used within investment models in other software formats. Mutual funds would provide the risk/return summary section of their prospectuses to the Commission and on their Web sites in interactive data format using the eXtensible Business Reporting Language (''XBRL''). The interactive data would be provided as an exhibit to registration statements. The proposed rules are intended not only to make risk/return summary information easier for investors to analyze, but also to assist in automating regulatory filings and business information processing. Interactive data has the potential to increase the speed, accuracy, and usability of mutual fund disclosure, and eventually reduce costs. We are also proposing to permit investment companies to submit portfolio holdings information in our interactive data voluntary program without being required to submit other financial information.

DATES: Comments should be submitted on or before August 1, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–12–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–08. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Alberto H. Zapata, Senior Counsel, or Tara R. Buckley, Branch Chief, Office of Disclosure Regulation, Division of Investment Management, at (202) 551–6784, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5720.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is proposing amendments to Rule 485 [1] under the Securities Act of 1933 (''Securities Act''), Rules 11,[2] 202,[3] and 401 [4] of Regulation S–T, [5] Rule 8b–33 [6] under the Investment Company Act of 1940 (''Investment Company Act''), and Form N–1A [7] under the Securities Act and the Investment Company Act. We are also proposing amendments to proposed Rule 405 of Regulation S–T.[8]

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I. Introduction and Background

A. Introduction

Over the last several decades, developments in technology and electronic data communication have significantly decreased the time and cost of filing disclosure documents with us. Technological developments also have facilitated greater transparency in the form of easier access to, and analysis of, financial reporting and disclosures. Most notably, in 1993 we began to require electronic filing on our Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'').[9] Since then, widespread use of the Internet has vastly decreased the time and expense of accessing disclosure filed with us.

We continue to update our filing standards and systems as technologies improve. These developments assist us in our goal to promote efficient and transparent capital markets. For example, since 2003 we have required electronic filing of certain ownership reports filed on Forms 3,[10] 4,[11] and 5 [12] in a format that provides interactive data, and recently we adopted similar rules governing the filing of Form D.[13] In addition, recently we have encouraged, and in some cases required, open-end management investment companies (''mutual funds'') [14] and

[1] 17 CFR 230.485.

[2] 17 CFR 232.11.

[3] 17 CFR 232.202.

[4] 17 CFR 232.401.

[5] 17 CFR 232.10 *et seq.*

[6] 17 CFR 270.8b–33.

[7] 17 CFR 239.15A and 274.11A.

[8] *See* Securities Act Release No. 8924 (May 30, 2008) [73 FR 32794 (June 10, 2008)] (''Interactive Data Proposing Release'').

[9] In 1993, we began to require domestic issuers to file most documents electronically. Securities Act Release No. 6977 (Feb. 23, 1993) [58 FR 14628 (Mar. 18, 1993)]. Electronic filing began with a pilot program in 1984. Securities Act Release No. 6539 (June 27, 1984) [49 FR 28044 (July 10, 1984)].

[10] 17 CFR 249.103 and 274.202.

[11] 17 CFR 249.104 and 274.203.

[12] 17 CFR 249.105.

[13] 17 CFR 239.500.

[14] An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. *See*

public reporting companies to provide disclosures and communicate with investors using the Internet.[15] Now, as part of our continuing efforts to assist filers as well as investors who use Commission disclosures, we propose to require that mutual fund risk/return summary information be provided in a format that makes the information interactive.

Our proposal builds on our voluntary filer program, started in 2005,[16] that allowed us to evaluate the merits of interactive data. The voluntary program allows companies to submit financial statements on a supplemental basis in interactive format as exhibits to specified filings under the Securities Exchange Act of 1934 (''Exchange Act'') and the Investment Company Act.[17] Over 75 companies have participated in the voluntary program. These companies span a wide range of industries and company characteristics, and have a total market capitalization of over $2 trillion. Companies that participate in the program still are required to file their financial statements in American Standard Code for Information Interchange (''ASCII'') or HyperText Markup Language (''HTML'').[18]

In 2007, we extended the program to enable mutual funds voluntarily to submit in interactive data format supplemental information contained in the risk/return summary section of their prospectuses.[19] The risk/return summary contains key information about a fund's investment objectives and strategies, costs, risks, and past performance.[20] Approximately 20 mutual funds from a wide variety of fund families have submitted risk/return summary information in interactive format.

In a recently issued release, we proposed to require companies, other than investment companies that are registered under the Investment Company Act, business development companies,[21] and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X, to submit financial information to the Commission in interactive data format.[22] In this release, we propose to extend similar requirements to mutual fund risk/return summary information.

The submission of mutual fund risk/return summary information based on interactive data would create new ways for investors, analysts, and others to retrieve and use the information. For example, users of risk/return summary information could download cost and performance information directly into spreadsheets, analyze it using commercial off-the-shelf software, or use it within investment models in other software formats. Through interactive data, what is currently static, text-based information can be dynamically searched and analyzed, facilitating the comparison of mutual fund cost, performance, and other information across multiple classes of the same fund and across the more than 8,000 funds currently available.[23]

Interactive data also could provide a significant opportunity to automate regulatory filings and business information processing, with the potential to increase the speed, accuracy, and usability of mutual fund disclosure. Such automation could eventually reduce costs. A mutual fund that uses a standardized interactive data format at earlier stages of its reporting cycle could reduce the need for repetitive data entry and, therefore, the likelihood of human error. In this way, interactive data may improve the quality of information while reducing its cost.

Also, to the extent investors currently are required to pay for access to mutual fund risk/return summary information that has been extracted and reformatted into an interactive data format by third-party sources, the availability of interactive data in Commission filings could allow investors to avoid additional costs associated with third-party sources.

We believe that requiring mutual funds to file the risk/return summary section of their prospectuses using interactive data format would enable investors, analysts, and the Commission staff to capture and analyze that information more quickly and at less cost than is possible using the same information provided in a static format. Any investor with a computer would have the ability to acquire and download interactive data that have generally been available only to intermediaries and third-party analysts. The proposed interactive data requirements would not change what is currently disclosed, but would add a requirement to include risk/return summary information in a new format as an exhibit. Thus the proposal to require that filers provide risk/return summary information using interactive data will not alter the disclosure or formatting standards of mutual fund prospectuses, which would continue to be available as they are today for those who prefer to view the traditional text-based document.

Throughout this release, we solicit comment on many issues concerning the use of interactive data, including specifically whether mutual fund risk/return summary information in interactive data format should be required as exhibits to Securities Act registration statements filed with us. We are seeking comment from investors, mutual funds, financial intermediaries, analysts, accountants, and any other parties or individuals who may be affected by the use of interactive disclosure in Commission filings, and any other members of the public.

B. Current Filing Technology and Interactive Data

Companies filing electronically are required to file their registration statements and periodic reports in ASCII or HTML format.[24] Also, to a limited degree, our electronic filing system uses other formats for internal processing and document-type identification. For example, our system uses eXtensible Markup Language (''XML'') to process reports of beneficial ownership of equity securities on Forms 3, 4, and 5 under section 16(a) of the Exchange Act.[25]

Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)].

[15] *See, e.g.* , Exchange Act Release No. 57172 (Jan. 18, 2008) [73 FR 4450 (Jan. 25, 2008)]; Securities Act Release No. 8861 (Nov. 21, 2007) [72 FR 67790 (Nov. 30, 2007)] (''Summary Prospectus Proposing Release''); Exchange Act Release No. 56135 (July 26, 2007) [72 FR 42222 (Aug. 1, 2007)]; Exchange Act Release No. 55146 (Jan. 22, 2007) [72 FR 4148 (Jan. 29, 2007)]; Securities Act Release No. 8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)].

[16] Securities Act Release No. 8529 (Feb. 3, 2005) [70 FR 6556 (Feb. 8, 2005)] (''Voluntary Program Adopting Release'').

[17] 15 U.S.C. 80a–1 *et seq.*

[18] HTML is a standardized language commonly used to present text and other information on Web sites.

[19] Securities Act Release No. 8823 (July 11, 2007) [72 FR 39290 (July 17, 2007)] (''Risk/Return Voluntary Program Adopting Release'').

[20] Items 2 and 3 of Form N–1A.

[21] Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act. 15 U.S.C. 80a–2(a)(48).

[22] *See* Interactive Data Proposing Release, supra note 8.

[23] Investment Company Institute, *2008 Investment Company Fact Book*, at 15 (2008), available at: *http://www.icifactbook.org/pdf/2007_factbook.pdf* (as of year-end 2007, there were 8,752 mutual funds).

[24] Rule 301 of Regulation S–T [17 CFR 232.301] requires electronic filings to comply with the EDGAR Filer Manual, and Section 5.2 of the EDGAR Filer Manual requires that electronic filings be in ASCII or HTML format. Rule 104 of Regulation S–T [17 CFR 232.104] permits filers to submit voluntarily as an adjunct to their official filings in ASCII or HTML unofficial PDF copies of filed documents. Unless otherwise stated, we refer to filings in ASCII or HTML as traditional format filings.

[25] 15 U.S.C. 78p(a).

Electronic formats such as HTML, XML, and XBRL are open standards [26] that define or ''tag'' data using standard definitions. The tags establish a consistent structure of identity and context. This consistent structure can be recognized and processed by a variety of different software applications. In the case of HTML, the standardized tags enable Web browsers to present Web sites' embedded text and information in predictable format. In the case of XBRL, software applications, such as databases, financial reporting systems, and spreadsheets, recognize and process tagged information.

XBRL was derived from the XML standard. It was developed and continues to be supported by XBRL International, a collaborative consortium of approximately 550 organizations representing many elements of the financial reporting community worldwide in more than 20 jurisdictions, national and regional. XBRL U.S., the international organization's U.S. jurisdiction representative, is a non-profit organization that includes companies, public accounting firms, software developers, filing agents, data aggregators, stock exchanges, regulators, financial services companies, and industry associations.[27]

Risk/return summary information in interactive format requires a standard list of tags. These tags are similar to definitions in an ordinary dictionary, and they cover a variety of concepts that can be read and understood by software applications. For the risk/return summary, a mutual fund would use the list of tags for risk/return summary information developed by the Investment Company Institute (''ICI'').[28] This list of tags contains descriptive labels, authoritative references to Commission regulations where applicable, and other elements, all of which provide the contextual information necessary for interactive data [29] to be recognized and processed by software.[30]

To apply data tags to risk/return summary information, a preparer uses commercially available software that guides the preparer in mapping information in the risk/return summary, such as line item costs in a mutual fund's fee table, to the appropriate tags in the standard list. This involves locating an element in the list of tags that represents the particular disclosure that is to be tagged. Occasionally, because mutual funds have some flexibility in preparing the risk/return summary, particularly the narrative portions, it is possible that a mutual fund may wish to use a non-standard disclosure that is not included in the standard list of tags. In this situation, a fund would create a company-specific element, called an extension.

A mutual fund may choose to tag its own risk/return summary using commercially available software, or it may choose instead to outsource the tagging process. In the event a mutual fund relies upon a service provider to tag the fund's risk/return summary, the mutual fund would want to carefully review the tagging done by the service provider in order to make sure that the tagged risk/return summary information is accurate and consistent with the information the mutual fund presents in its traditional format filing.

Because mutual fund risk/return summary information in interactive data format, referred to as the interactive data file, is intended to be processed by software applications, the unprocessed interactive data is not readable. Thus, viewers are necessary to convert the interactive data file to human readable format. Some viewers are similar to Web browsers used to read HTML files.

The Commission's Web site currently provides links to four viewers that allow the public to easily read mutual fund and other company disclosures submitted using interactive data.[31] One of these viewers allows users to view and compare mutual fund risk/return summary information, including investment objectives and strategies, risks, costs, and performance, that is submitted in interactive data format.[32] These viewers demonstrate the capability of downloading interactive data into software such as Microsoft Excel as well as into other applications that are widely available on the Internet. In addition, we are aware of other applications under development that may provide additional and advanced functionality.

C. The Commission's Multiyear Evaluation of Interactive Data and Overview of Proposed Rules

In 2004, we began assessing the benefits of interactive data and its potential for improving the timeliness and accuracy of financial disclosure and analysis of Commission filings.[33] As part of this evaluation, we adopted rules in 2005 permitting filers, on a voluntary basis, to provide financial disclosure in interactive data format as an exhibit to certain filings on our electronic filing system. After more than two years of increasing participation, over 75 companies have chosen to provide interactive data financial reporting.[34]

In 2007, we extended the program to enable mutual funds voluntarily to submit risk/return summary information in interactive data format. To date,

[26] The term ''open standard'' is generally applied to technological specifications that are widely available to the public, royalty-free, at minimal or no cost.

[27] XBRL U.S. supports efforts to promote interactive financial and business data specific to the U.S.

[28] Unless stated otherwise, when we refer to the ''list of tags for risk/return summary information'' we mean the interactive data taxonomy developed by the ICI, including any modifications. We anticipate entering into a contract to update the architecture of the taxonomy developed by the ICI and conform the taxonomy to any changes in the risk/return summary that we adopt pursuant to a pending rule proposal. *See* Summary Prospectus Proposing Release, *supra* note 15.

The ICI is a national association of the U.S. investment company industry. The taxonomy developed by the ICI received acknowledgement from XBRL International in June 2007 and is used by mutual funds participating in the Commission's voluntary program. The taxonomy is available on XBRL International's Web site at: *http://www.xbrl.org/Taxonomy/ici/ici-rr-summarydocument-20070516-acknowledged.htm*.

[29] The proposed rules would define the interactive data necessary to create human-readable disclosure as the ''interactive data file,'' which would be required with every interactive data submission. *See* Interactive Data Proposing Release, *supra* note 8 (proposing new definitions under 17 CFR 232.11). The EDGAR Filer Manual would identify any necessary supporting files.

[30] For example, contextual information would identify the entity to which it relates, usually by using the filer's CIK number. A hypothetical filer converting its traditional electronic disclosure of total annual fund operating expenses of 0.73% would have to create interactive data that identify what the 0.73% represents, total annual fund operating expenses, and that the number is a percentage. The contextual information would include other information as necessary; for example, the date of the prospectus to which it relates and the series and class to which it applies.

A mutual fund may issue multiple ''series'' of shares, each of which is preferred over all other series in respect of assets specifically allocated to that series. Rule 18f–2 under the Investment Company Act [17 CFR 270.18f–2]. Each series is, in effect, a separate investment portfolio.

A mutual fund may issue more than one class of shares that represent interests in the same portfolio of securities with each class, among other things, having a different arrangement for shareholder services or the distribution of securities, or both. Rule 18f–3 under the Investment Company Act [17 CFR 270.18f–3].

[31] *See* viewers available at *http://www.sec.gov/xbrl*.

[32] A mutual fund information viewer for the voluntary program is available at: *http://a.viewerprototype1.com/viewer*.

[33] *See SEC Announces Initiative to Assess Benefits of Tagged Data in Commission Filings*, Securities and Exchange Commission Press Release, July 22, 2004, available at: *http://www.sec.gov/news/press/2004-97.htm*.

[34] A viewer for this interactive data is available at: *http://www.sec.gov/spotlight/xbrl/xbrlwebapp.shtml*. This viewer, one of several funded by the Commission to demonstrate interactive data, maintains a running total of companies and filers submitting data as part of the voluntary program. As of April 17, 2008, 78 companies had submitted 350 interactive data reports.

approximately 20 mutual funds have chosen to provide interactive data risk/return summaries.[35]

During this time, we have kept informed of technology advances and other interactive data developments. We note that several U.S. and foreign regulators have begun to incorporate interactive data into their financial reporting systems. The Federal Deposit Insurance Corporation (''FDIC''), the Federal Reserve, and the Office of the Comptroller of the Currency (''OCC'') require the use of XBRL.[36] As of 2006, approximately 8,200 U.S. financial institutions were using XBRL to submit quarterly reports to banking regulators.[37] Countries that have required or instituted voluntary or pilot programs for XBRL financial reporting include Australia, Belgium, Canada, China, Denmark, France, Germany, Ireland, Israel, Japan, Korea, Luxembourg, the Netherlands, New Zealand, Norway, Singapore, Spain, Sweden, Thailand, and the United Kingdom.[38]

We also have kept informed of relevant advances and developments by hosting roundtables on the topic of interactive data reporting,[39] creating the Commission's Office of Interactive Disclosure,[40] and meeting with international securities regulators to discuss, among other items, timetables for implementation of interactive data initiatives for financial reporting.[41] Also, staff of the Commission have attended meetings of the Advisory Committee on Improvements to Financial Reporting (''CIFiR'') in which the committee discussed proposals for financial reporting using interactive data.[42] We also have reviewed written statements and public comments received by CIFiR on its XBRL developed proposal.[43]

Building on our experience monitoring the voluntary program and our participation in the other initiatives described above, we are now proposing rules to require mutual funds to provide risk/return summary information using interactive data as an exhibit to their registration statements filed on Form N–1A.[44] Interactive data would be required to be provided on a mutual fund's Web site[45] and with the fund's Securities Act registration statements and post-effective amendments thereto.[46] We believe this has the potential to provide advantages for the investing public by making risk/return summary information more accessible, timely, inexpensive, and easier to analyze.

By enabling mutual funds to further automate their disclosure processes, interactive data may eventually help funds improve the speed at which they generate information, while reducing the cost of filing and potentially increasing the accuracy of the data. For example, with standardized interactive data tags, registration statements may require less time for information gathering and review. Also, standardized interactive data tagging may enhance the ability of a fund's in-house professionals to identify and correct errors in the fund's registration statements filed in traditional electronic format. Mutual funds also may gain benefits not directly related to risk/return summary information disclosures. For example, mutual fund families that use interactive data may be able to compile information more quickly and potentially more reliably both for internal purposes and for communications with financial intermediaries, third party information providers, and the public. However, we recognize that at the outset, mutual funds would most likely prepare their interactive data as an additional step after their prospectuses have been prepared.

The principal elements of the proposal are as follows:

- Mutual funds would provide to the Commission a new exhibit with their risk/return summary information in interactive data format, beginning with initial registration statements, and post-effective amendments that are annual updates to effective registration statements, that become effective after December 31, 2009.[47]
- Mutual funds providing risk/return summary information in interactive data format would be required to use the most recent list of tags released by XBRL U.S. as required by the EDGAR Filer Manual. Mutual funds also would be required to tag a limited number of document and entity identifier elements, such as the form type and the fund's name. As with interactive data for the risk/return summary, these document and entity identifier elements would be formatted using the appropriate list of tags as required by the EDGAR Filer Manual.[48]

[35] The mutual fund information viewer contains all mutual fund submissions under the voluntary program. As of May 1, 2008, 21 mutual funds had submitted 33 interactive data reports.

[36] Since 2005, the FDIC, Federal Reserve, and the OCC have required the insured institutions that they oversee to file their quarterly Consolidated Reports of Condition and Income (called ''Call Reports'') in interactive data format using XBRL. Call Reports, which include data about an institution's balance sheet and income statement, are used by these federal agencies to assess the financial health and risk profile of the financial institution.

[37] *See* Improved Business Process Through XBRL: A Use Case for Business Reporting, available at *http://www.xbrl.org/us/us/FFIEC%20White%20Paper%2002Feb2006.pdf.*

[38] *See* XBRL International Progress Report (November 2007), available at *http://www.xbrl.org/ProgressReports/2007_11_XBRL_Progress_Report.pdf.*

[39] *See* materials available at *http://www.sec.gov/spotlight/xbrl/xbrl-meetings.shtml.*

[40] *See SEC Announces New Unit to Lead Global Move to Interactive Data*, Securities and Exchange Commission Press Release, October 9, 2007, available at: *http://www.sec.gov/news/press/2007/2007-213.htm.*

[41] *See Chairman Cox, Overseas Counterparts Meet to Discuss Interactive Data Timetable*, Securities and Exchange Commission Press Release, November 9, 2007, available at: *http://www.sec.gov/news/press/2007/2007-227.htm.*

[42] The Commission established CIFiR to examine the U.S. financial reporting system, with the goals of reducing unnecessary complexity and making information more useful and understandable for investors. *See SEC Establishes Advisory Committee to Make U.S. Financial Reporting System More User-Friendly for Investors*, Securities and Exchange Commission Press Release, June 27, 2007, available at *http://www.sec.gov/news/press/2007/2007-123.htm.*

CIFiR conducted an open meeting on March 14, 2008, in which it heard reactions from an invited panel of participants to CIFiR's developed proposal regarding required filing of financial information using interactive data. An archived Webcast of the meeting is available at *http://sec.gov/about/offices/oca/cifir.shtml.* The March 14, 2008 panelists presented their views and engaged with CIFiR members regarding issues relating to requiring interactive data tagged financial statements, including tag list and technological developments, implications for large and small public companies, needs of investors, necessity of assurance and verification of such tagged financial statements, and legal implications arising from such tagging. Also, CIFiR has provided to the Commission an interim progress report that contains a developed proposal that the Commission, over the long term, require the filing of financial information using interactive data once specified conditions are satisfied. See Progress Report of the Advisory Committee on Improvements to the Financial Reporting to the United States Securities and Exchange Commission (Feb. 14, 2008) (''Progress Report''), available at *http://www.sec.gov/about/offices/oca/acifr/acifr-pr-021408-final.pdf.*

[43] The XBRL developed proposal appears in chapter 4 of the Progress Report. Written statements of panelists at the March 14, 2008 meeting and public comments received on the Progress Report are available at *http://sec.gov/comments/265-24/265-24.shtml.*

[44] Form N–1A is the form used by mutual funds to register under the Investment Company Act and to offer securities under the Securities Act.

[45] The proposed Web site posting requirement would apply only to the extent a mutual fund already maintains a Web site.

[46] Interactive data would be required as an exhibit to a Securities Act registration statement or post-effective amendment thereto that contains risk/return summary information. Interactive data would not be required as an exhibit to a post-effective amendment that does not contain risk/return summary information.

[47] The proposed schedule is premised on the rules being adopted this fall in time for mutual funds to implement this schedule, and could be adjusted depending on when the Commission adopts any final rules.

[48] The appropriate list of tags for document and entity identifier elements would be a list released

Continued

• A mutual fund required to provide risk/return summary information in interactive data format to the Commission also would be required to post that information in interactive data format on its Web site on the earlier of the date that the interactive data is submitted to the Commission or is required to be submitted to the Commission.

• The proposed rules would not alter the requirements to provide risk/return summary information with the traditional format filings.[49]

• Risk/return summary information in interactive data format would be provided as exhibits identified in General Instruction C.3.(g) of Form N–1A.

• Viewable interactive data as displayed through software available on the Commission's Web site, and to the extent identical in all material respects to the corresponding portion of the traditional format filing, would be subject to all the same liability provisions of the federal securities laws as the corresponding data in the traditional format filing.

• Data in the interactive data file submitted to us generally would be subject to the federal securities laws in a manner similar to that of the voluntary program and, as a result, would be

○ Deemed not filed for purposes of specified liability provisions; and

○ Protected from liability for failure to comply with the proposed tagging and related requirements if the interactive data file either

■ Met the requirements; or

■ Failed to meet those requirements, but the failure occurred despite the mutual fund's good faith and reasonable effort, and the mutual fund corrected the failure as soon as reasonably practicable after becoming aware of it.

• The proposed rules would require the risk/return summary information and document and entity identifier elements to be tagged according to Regulation S–T and the EDGAR Filer Manual.[50]

• Each interactive data submission would be required to be filed as a post-effective amendment under Rule 485(b) under the Securities Act[51] and would be required to be filed after effectiveness of the related filing, but no later than 15 business days after the effective date of the related filing.

• If a mutual fund does not submit or post interactive data as required, the fund's ability to file post-effective amendments to its registration statement under Rule 485(b) under the Securities Act would be automatically suspended until the fund submits and posts the interactive data as required.

• We anticipate that the voluntary program would be modified, if the proposed rules are adopted, to exclude participation by mutual funds with respect to risk/return summary information but continue to permit investment companies to participate with respect to financial statement information. As a result, the voluntary program would continue for the financial statements of investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X.

• Registered investment companies, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X would be permitted to submit exhibits under the voluntary program containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format.

II. Discussion of the Proposed Amendments

A. Submission of Risk/Return Summary Information Using Interactive Data

The ICI's risk/return summary list of tags received acknowledgement from XBRL International in June 2007.[52] The Commission anticipates entering into a contract to update the architecture of the list of tags and conform the list of tags to any changes in the risk/return summary that we adopt pursuant to a pending rule proposal.[53]

Interactive data risk/return summary information using the list of tags for risk/return summary information has been submitted voluntarily to us by approximately 20 mutual funds. In recent years, there has been a growing development of software products for users of interactive data, as well as of applications to assist companies, including mutual funds, to tag their disclosures using interactive data.[54] The growing number of software applications available to preparers and consumers is helping make interactive data increasingly useful to both retail and institutional investors, as well as to other participants in the U.S. and global capital markets. On this basis, we believe interactive data, and in particular the XBRL standard, have become widespread and that the list of tags for risk/return summary information is now sufficiently advanced to require that mutual funds provide their risk/return summary information in interactive data format.

As discussed in more detail below, our proposed rules would require all mutual funds to submit interactive data with any registration statement or post-effective amendment on Form N–1A that includes or amends risk/return summary information.[55] We anticipate that the first required submissions would be for initial registration statements and post-effective amendments that are annual updates to effective registration statements and that become effective after December 31, 2009.

We are proposing that mutual funds be required to provide the same risk/return summary information in interactive data format that mutual

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by XBRL U.S. and would be required to be used by all issuers required to submit interactive data.

[49] When we extended the voluntary program to the mutual fund risk/return summary, we stated in the adopting release that the interactive data submission would be supplemental to filings and not replace the required traditional electronic format of the information it contains. We also said that volunteers would be required to continue to file their traditional electronic filings. *See* Part II.A. of the Risk/Return Voluntary Program Adopting Release, *supra* note 19, 72 FR at 39292.

[50] Proposed Rule 405 of Regulation S–T would directly set forth the basic tagging requirements and indirectly set forth the rest of the tagging requirements through the requirement to comply with the EDGAR Filer Manual. Consistent with proposed Rule 405, the Filer Manual would contain the technical tagging requirements. *See* Interactive Data Proposing Release, *supra* note 8 (proposing Rule 405 of Regulation S–T).

[51] Rule 485(b) under the Securities Act provides for immediate effectiveness of amendments to registration statements that make certain non-material and other changes.

[52] The list of tags is available on XBRL International's Web site at: *http://www.xbrl.org/Taxonomy/ici/ici-rr-summarydocument-20070516-acknowledged.htm.*

There are two levels of XBRL taxonomy recognition: (1) ''Acknowledgement'' is formal recognition that a taxonomy complies with XBRL specifications, including testing by a defined set of validation tools; and (2) ''approval'' is a formal recognition requiring more detailed quality assurance and testing, including compliance with official XBRL guidelines for the type of taxonomy under review, creation of a number of instance documents, and an open review period after acknowledgement. For more information regarding the XBRL taxonomy recognition process, see ''Taxonomy Recognition Process'' on the XBRL International Web site available at: *http://www.xbrl.org/TaxonomyRecognition/.*

[53] *See* Summary Prospectus Proposing Release, *supra* note 15.

[54] *See SEC's Office of Interactive Disclosure Urges Public Comment as Interactive Data Moves Closer to Reality for Investors*, Securities and Exchange Commission Press Release, Dec. 5, 2007, available at: *http://www.sec.gov/news/press/2007/2007-253.htm.* A list of interactive data products and service providers is available at: *http://xbrl.us/Vendors/Pages/default-expand.aspx.*

[55] *See* proposed General Instruction C.3.(g) to Form N–1A.

funds have been providing in the voluntary program.[56] In addition, funds would be required to provide document and entity identifier tags, such as the form type and the fund's name. As was the case in the voluntary program, the proposed requirement for interactive data reporting is intended to be disclosure neutral. We do not intend the rules to result in mutual funds providing more, less, or different disclosure for a given disclosure item depending upon the format, whether ASCII, HTML, or XBRL.

We propose to continue requiring the existing electronic formats now used in filings because we believe it is necessary to monitor the usefulness of interactive data reporting to investors and the cost and ease of providing interactive data before attempting further integration of the interactive data format. However, the proposed rules would treat viewable interactive data as displayed through software available on the Commission's Web site, and interactive data generally,[57] as part of the official filing, instead of a supplement as is the case in the voluntary program. Further evaluation will be useful with respect to the availability of inexpensive, sophisticated interactive data viewers. Currently there are many software providers and financial printers that are developing interactive data viewers. We anticipate that these will become widely available and increasingly useful to investors.

We expect that the open standard feature of XBRL format will facilitate the development of applications and software, and that some of these applications may be made available to the public for free or at a relatively low cost. The expected continued improvement in this software would give the public increasingly useful ways to view and analyze mutual fund risk/return summary information. After evaluating the use of the new interactive data technologies, software, and list of tags, we may consider proposing rules to eliminate the filing of risk/return summary information in ASCII or HTML format. Or we may consider proposing rules to require a filing format that integrates ASCII or HTML with XBRL.

We believe XBRL is the appropriate interactive data format with which to supplement ASCII and HTML. Our experience with the voluntary program and feedback from company, audit, and software communities point to XBRL as the appropriate open standard for the purposes of this rule. As a derivative of the XML standard, XBRL data would be compatible with a wide range of open source and proprietary XBRL software applications. As discussed above, many XBRL-related products exist for analysts, investors, filers, and others to more easily create and compare disclosures; still others are in development, and that process would likely be hastened by mutual fund disclosure using interactive data. Comments on our 2004 concept release and proposed rules in 2004 and 2007 generally supported interactive data and XBRL in particular.[58] Several other factors support our views regarding XBRL's broad and growing acceptance, internationally as well as in the U.S. For example, as noted above, in addition to the use of XBRL by other U.S. agencies,[59] several foreign securities regulators have adopted voluntary or required XBRL financial reporting.[60] We understand that several U.S. public and private companies use XBRL in connection with financial reporting or analysis.

Request for Comment:

- Should we adopt rules that require each mutual fund's risk/return summary information to be provided in interactive data format? What are the principal factors that should be considered in making this decision? Is it useful to users of risk/return summary information to continue to have, in addition to interactive data, duplicate, human-readable risk/return summary information in ASCII or HTML format?
- What opportunities exist to improve the display of risk/return summary information prepared using interactive data? How should these affect any continued requirement to file ASCII- or HTML-formatted risk/return summary information? For example, if the technology is sufficiently developed, should we propose rules to encourage or require a format that embeds interactive data tags in HTML so that risk/return summary information can be viewed in a browser? How should these affect any continued requirement to file ASCII- or HTML-formatted risk/return summary information? What obstacles exist to making such improvements in the display of XBRL information?
- Is it appropriate to require mutual funds to provide interactive data using XBRL? Alternatively, in place of such a requirement, should the Commission instead wait to see whether interactive data disclosure by mutual funds is voluntarily adopted? Without a requirement, would the development of products for producing and using interactive data from mutual funds meet the needs of investors, third party information providers, and others who seek interactive data? Would a large percentage of mutual funds provide interactive data voluntarily, and following the same standard, if not required to do so?
- If we do not adopt the proposed rules and instead wait to see whether mutual funds on their own expand their use of interactive data, would such data be less comparable among mutual funds? Is there a ''network effect,'' such that interactive data would not be useful unless many or all mutual funds provide their risk/return summary information using interactive data? Would the development of software for retail investors to obtain and make use of such data be slowed without a requirement that mutual funds provide interactive data?
- What advantages are there to investors having the mutual fund responsible for preparing risk/return summary information in interactive data format, as opposed to a model in which third parties independently prepare the information in interactive format and charge a fee for it?
- Do commenters agree that compared to filings using ASCII and HTML, interactive data would require less manually-transferred data? If so, do commenters believe that the proposed rules would result in less human error and therefore contribute to reduced costs?

[56] *See* proposed General Instruction C.3.(g) to Form N–1A.

[57] As further discussed below in Part II.F, interactive data generally would be deemed not filed for purposes of specified liability provisions.

[58] Securities Act Release No. 8497 (Sept. 27, 2004) [69 FR 59111 (Oct. 1, 2004)] (''Concept Release''); Securities Act Release No. 8496 (Oct. 1, 2004) [69 FR 59094 (Oct. 1, 2004)]; Securities Act Release No. 8781 (Feb. 6, 2007) [72 FR 6676 (Feb. 12, 2007)]. *See, e.g.*, letter from Deloitte & Touche LLP (Nov. 11, 2004) regarding the Voluntary Program Adopting Release, *supra* note 16; and letter from PR Newswire Association LLC (Nov. 11, 2004) regarding the Concept Release; and letters from Charles S. Hoffman (Feb. 10, 2007); ICI (Mar. 14, 2007); NewRiver, Inc. (Mar. 14, 2007); PricewaterhouseCoopers LLP (Mar. 14, 2007); and Ayal Rosenthal (Mar. 6, 2007) regarding extending the voluntary program to allow funds to submit tagged risk/return summaries.

We also note that financial statement participants in the voluntary program provided positive feedback with respect to possible mandatory XBRL. For example, the vast majority of voluntary program participants that submitted responses and views to a questionnaire answered in the affirmative to the question ''Based on your experience to date, do you think it would be advisable for the Commission to continue to explore the feasibility and desirability of the use of interactive data on a more widespread and, possibly, mandated basis?'' See question V.f in the Interactive Data Voluntary Program Questionnaire available at *http://www.sec.gov/cgi-bin/XBRL_Questionnaire.*

[59] *See* note 36 above. Also we note CIFiR's support of XBRL as referenced above in Part I.C.

[60] For example, such countries include Canada, China, Israel, Japan, Korea, and Thailand.

• If we require interactive data disclosure and the proposed rules result in more effective and efficient disclosure with reduced human error and cost, would fees charged by financial printers or other service providers be likely reduced to reflect such lower costs?

• If we adopt rules requiring interactive data disclosure of risk/return summary information, is the XBRL standard the one that we should use? Are any other standards becoming more widely used or otherwise superior to XBRL? What would the advantages of any such other standards be over XBRL?

• Is the XBRL format for interactive data sufficiently developed to require its use at this time? If not, what indicators should we use to determine when it has become sufficiently developed to require its use?

• Are vendors likely to develop and make commercially available software applications or Internet products that will be able to deliver the functionality of interactive data to retail investors?

• How important is it that many different types of viewers with varying levels of sophistication and functionality be available to investors? In addition to the free viewer provided on the SEC Web site, are there likely to be other such products available at low or no cost?

• If we require risk/return summary information in interactive data format, what are the principal challenges facing the eventual integration of such reporting with the current filing formats, ASCII and HTML, so that filing in all three formats would no longer be necessary?

B. Compliance Date

The proposed rules would require all mutual funds to submit interactive data with any registration statement or post-effective amendment on Form N–1A that includes or amends risk/return summary information.[61] If the rules are adopted by this fall, we anticipate that the first required submissions would be for initial registration statements and post-effective amendments that are annual updates to effective registration statements[62] and that become effective after December 31, 2009. We are sensitive to concerns that undue expense and burden should not accompany the adoption of required interactive data reporting. We therefore propose limitations on liability applicable to the interactive data file, as well as a 15-business-day period for making interactive data submissions after effectiveness of the related filing.[63]

Mutual funds under the proposed rules would be required to convert their risk/return summary information into an interactive data file using the list of tags for risk/return summary information, as approved for use by the Commission.[64] The submission also would be required to include any supporting files as prescribed by the EDGAR Filer Manual. Interactive data would be required for the entirety of the risk/return summary information, including information for all series and all classes.[65]

As noted above, we anticipate deferring the requirement for submission of risk/return summary information in interactive data format for all mutual funds until after December 31, 2009. We also anticipate that the voluntary program, with its limitations on liability, will remain available to mutual funds until December 31, 2009, for purposes of submitting risk/return summary information in interactive data format. We believe that this period of almost two years from now will give mutual funds, including those that have not previously participated in the voluntary program, adequate opportunity to test interactive data submissions so that they may be fully prepared to file risk/return summary information in interactive data format after December 31, 2009.

Our multiyear experience with interactive data has helped us understand the extent to which a mutual fund would incur additional costs to create and submit its existing disclosures in interactive data format. Based on that experience, we believe that the process of converting a mutual fund's existing ASCII or HTML risk/return summary information into interactive data would not impose a significant burden or cost. Mutual funds could choose to tag their risk/return summary information using available software without using outside services or consultants; alternatively, they could rely on financial printers, consultants, and software companies for assistance, although they would retain ultimate responsibility for both their risk/return summary information and their tagged data. As discussed in more detail in the cost-benefit analysis below,[66] we believe that the modest first-year costs for a mutual fund would decrease in subsequent periods. We also believe that these costs would be justified by interactive data's benefits.

We expect that most mutual funds that are part of smaller fund families, which generally are disproportionately affected by regulatory costs, also would be able to provide their risk/return summary information in interactive data format without undue effort or expense. While interactive data reporting involves changes in reporting procedures mostly in the initial reporting periods, we expect that these changes would provide efficiencies in future periods. As a result, there may be potential net savings to the mutual fund, particularly if interactive data become integrated into the mutual fund's disclosure process. While we recognize that requiring interactive data risk/return summary information would likely result in start-up expenses for smaller mutual fund families, we expect that both software and third-party services will be available to help meet the needs of smaller mutual fund families. We also intend that the delayed compliance date for all mutual funds would permit mutual funds that are part of smaller fund families to learn from the experience of funds that have participated in the voluntary program and to participate in the voluntary program themselves during the almost two-year period prior to December 31, 2009. The delayed compliance date would also give mutual funds that are part of smaller fund families a significant period of time across which to spread first-year data tagging costs.

We believe that adopting a delayed compliance date of December 31, 2009, would establish an appropriate and measured timeline, which we would be able to monitor and, if necessary, reconsider during the continuation of the voluntary program.

Request for Comment:

• Is the proposed schedule for implementation of interactive data tagging appropriate?

• Should we advance the first required interactive data submission to be for filings that become effective after June 30, 2009, or some other date, rather

[61] *See* proposed General Instruction C.3.(g) to Form N–1A.

[62] Section 10(a)(3) of the Securities Act [15 U.S.C. 77j(a)(3)] generally requires that when a prospectus is used more than nine months after the effective date of the registration statement, the information in the prospectus must be as of a date not more than sixteen months prior to such use. The effect of this provision is to require mutual funds to update their prospectuses annually to reflect current cost, performance, and other financial information. A mutual fund updates its registration statement by filing a post-effective amendment to the registration statement.

[63] We discuss more fully at Part II.F liability related to required submissions of interactive data in general and the continuation of some of the limitations on liability used in the voluntary program in particular.

[64] *See* Interactive Data Proposing Release, *supra* note 8 (proposing amendments to Rule 11 of Regulation S–T and proposing new Rule 405(a)) and proposed amendments to proposed Rule 405(a).

[65] Proposed General Instruction C.3.(g) of Form N–1A.

[66] *See* Part V.

than December 31, 2009? Should we delay the first required interactive data submissions until, for example, 2011, 2012, or later? What benefits would there be to advancing or delaying implementation of the proposed rules? How much lead time do mutual funds need to familiarize themselves with interactive data and the process of mapping risk/return summary information using the list of tags for risk/return summary information?

• Should there be a phase-in to provide mutual funds with more time to become familiar with the list of tags for risk/return summary information and to encourage potential vendors of interactive data products and services to invest in the development and marketing of such products? If so, what should the phase-in dates be and what funds should be included in each phase? Should we differentiate funds based on net assets of the fund, the fund family, or on some other basis? Should we, for example, provide a more delayed compliance date for mutual funds that are small entities for purposes of the Regulatory Flexibility Act, *i.e.,* funds that, together with other investment companies in the same group of related investment companies, have net assets of $50 million or less as of the end of their most recent fiscal year? If we provide a more delayed compliance date for smaller fund families, how should we define such a category?

• Is the proposed timing sufficient for mutual funds to familiarize themselves with interactive data and the process of mapping risk/return summary information using the list of tags for risk/return summary information? Is it sufficient for funds that are part of smaller fund families, *e.g.,* funds that are small entities for purposes of the Regulatory Flexibility Act?

• Should there be a longer lag than proposed for mutual funds that are part of smaller fund families, *e.g.,* funds that are small entities for purposes of the Regulatory Flexibility Act, to allow them to allocate the necessary resources and meet the proposed requirements?

• Should mutual funds that are part of smaller fund families, *e.g.,* funds that are small entities for purposes of the Regulatory Flexibility Act, be subject to the proposed rules at all? Should compliance with the proposed rules be solely voluntary for those funds?

• Will the rule proposal and the anticipated December 31, 2009 compliance date sufficiently encourage potential vendors of interactive data products and services to invest in the development and marketing of such products? If not, what changes should we make to encourage developments in the markets for filer and investor products related to mutual fund interactive data?

C. Documents and Information Covered by the Proposed Rules

The proposed rules would require interactive data tagging of a mutual fund's risk/return summary information, which is currently provided in response to Items 2 and 3 of Form N–1A.[67] In November 2007, the Commission proposed to amend Form N–1A.[68] The amendments, if adopted as proposed, would result in the risk/return summary information being contained in Items 2, 3, and 4 of Form N–1A. If the Commission adopts that proposal, we intend to apply any tagging rules we adopt to the items of amended Form N–1A that contain the information that is currently contained in Items 2 and 3.

As with the voluntary program, the proposed rules would require mutual funds to provide the interactive data in an exhibit.[69] Interactive data would be required for all information in the risk/return summary, including information for each series and class included in a mutual fund's prospectus.[70] The proposed rules would not, however, require interactive data submissions for parts of Form N–1A other than the risk/return summary information.

As with the voluntary program, the proposed rules would require that the information contained in the risk/return summary section in the traditional format filing on Form N–1A be the same as in the interactive data format.[71] Further, the interactive data would have to be submitted in a manner that would permit the information for each series and any class-specific information, such as expenses and performance, to be separately identified by series and class.[72] However, information that is not class-specific, such as investment objectives, would not be required to be separately identified by class.

To clarify the intent of the rules, we propose to include an instruction to proposed Rule 405 of Regulation S–T stating that the rules require a disclosure format, but do not change substantive disclosure requirements.[73] The rules also would state clearly that the information in interactive data format should not be more or less than the information in the ASCII or HTML part of the Form N–1A filing.[74]

The proposed rules would not eliminate or alter existing filing requirements that risk/return summary information be filed in traditional format. We believe investors and other users may wish to use these electronic formats to obtain an electronic or printed copy of the entire registration statement, either in addition to or instead of disclosure formatted using interactive data. In addition, we propose to no longer require or permit the cautionary disclosure that is used in the voluntary program for required interactive data, which states that investors should not rely on the interactive data information in making investment decisions. We believe that such language would be inconsistent with the proposal that interactive data be part of the related registration statement.

We are proposing to require a mutual fund to submit interactive data for the risk/return summary information that is contained in any filing on Form N–1A that includes or amends information provided in response to Items 2 and/or 3.[75] This would include initial registration statements and any post-effective amendment that makes changes to the risk/return summary information.[76]

Request for Comment:

• Has the interactive information available through the voluntary program been useful? Should we require that more or less information be tagged? For example, should the entire risk/return summary section of Form N–1A, including the investment objective and

[67] *See* proposed Rule 405(b)(2); General Instruction C.3.(g) to Form N–1A. We are also proposing technical amendments to proposed Rule 405 that reflect this proposed requirement.

As previously noted, proposed Rule 405 of Regulation S–T would directly set forth the basic tagging requirements and indirectly set forth the rest of the tagging requirements through the requirement to comply with the EDGAR Filer Manual. Consistent with proposed Rule 405, the EDGAR Filer Manual would contain the detailed tagging requirements.

[68] *See* Summary Prospectus Proposing Release, *supra* note 15, 72 FR at 67817.

[69] *See* proposed General Instruction C.3.(g) to Form N–1A; proposed Rule 405(a). The Interactive Data File must be named ''EX–101'' as specified in the EDGAR Filer Manual.

[70] *See* proposed General Instruction C.3.(g) to Form N–1A.

[71] Proposed Rule 405(b)(2).

[72] Proposed General Instruction C.3.(g) to Form N–1A.

[73] *See* Interactive Data Proposing Release, *supra* note 8 (proposing Preliminary Note 2 to proposed Rule 405).

[74] Proposed Rule 405(b)(2).

[75] Proposed General Instruction C.3.(g) to Form N–1A.

[76] Revised interactive data would be required with respect to post-effective amendments that make changes to the risk/return summary information so that the risk/return summary information would be the same in both the traditional format filing and the interactive data file. If the risk/return summary information is not revised in connection with a post-effective amendment, the exhibit index would indicate that the interactive data file was already provided.

strategies, risks, costs, and performance information, be required to be tagged in interactive data format? Should we apply tagging requirements to both narrative information, such as investment objectives, and numerical information, such as costs?

• Would investors and other users of risk/return summary information find tagged risk/return information useful for analytical purposes? Is tagged risk/return summary information that is narrative, rather than numerical, useful as an analytical tool?

• Would the availability of interactive data-formatted risk/return summary information possibly cause competitive pressures on mutual funds to choose to make more disclosures than are required by Commission regulations? Alternatively, might the availability of tagged data possibly cause mutual funds to choose to curtail such disclosures? What types of disclosures would those be?

• Once interactive data are provided with a Form N–1A filing, should we limit the requirement to provide interactive data for amendments to only the amendments that reflect substantive changes from or additions to the risk/return summary information? What would the benefits and burdens be of revising interactive data that previously was provided in connection with a registration statement on Form N–1A to reflect changes?

• Do the standards we propose for tagging provide clear enough guidance for preparers so that we can expect to achieve consistency among filers?

• Should we require that mutual funds tag their document and entity [77] information? Would this information be useful in interactive data format?

• Should we provide an opportunity for mutual funds to submit voluntarily in interactive data format information other than that which they would be required to submit as interactive data? If so, should we permit such interactive data format information to be subject to provisions governing the proposed required filing of interactive data? Should we instead permit such interactive data format information to be submitted under the voluntary program?

• If we adopt the recently proposed amendments to Form N–1A,[78] should we require interactive data format information for the risk/return summary? Should we require interactive data format information for any additional information contained in the proposed summary section of the prospectus? Should the information in the proposed summary prospectus be tagged? If so, should all of the information required in the summary prospectus be tagged? If not, what information in the summary prospectus should be tagged? Should only the risk/return information in the summary prospectus be tagged?

• When we proposed the summary prospectus, we proposed that mutual funds choosing to use a summary prospectus be required to provide the summary prospectus, the statutory prospectus, and the statement of additional information on the Internet with links that would allow persons to move back and forth among the documents.[79] If we were to require information in the prospectus and/or the summary prospectus to be submitted in interactive data format, should we adopt as proposed or modify the proposed linking requirements? [80]

• Should the proposed rules eliminate the requirement that the risk/return summary information be submitted in traditional format, in addition to interactive data format? Should cautionary language from the voluntary program be eliminated or modified and, if not, why not?

• Should the proposed rules apply to a prospectus filed under Securities Act Rule 497? [81] If we require interactive data with filings that do not currently include exhibits, such as prospectus supplements, should we require that the interactive data be provided as schedules or exhibits?

D. Filing Period

Form N–1A filings, which contain mutual fund registration statements (or amendments thereto), are often subject to revision prior to effectiveness. For this reason, the proposed rules would not permit the submission of an interactive data exhibit that is related to a registration statement or a post-effective amendment that is not yet effective. More specifically, the proposed rules would provide that an interactive data exhibit to a Form N–1A filing, whether the filing is an initial registration statement or a post-effective amendment thereto, must be submitted as a post-effective amendment to the registration statement to which the interactive data relates. Under the proposal, the amendment, including the interactive data, must be submitted after the related filing becomes effective, but not later than 15 business days after the effective date of the related filing.[82] Our proposal that the interactive data exhibit be filed within 15 business days is intended both to provide funds with adequate time to prepare the exhibit and to make the interactive data available promptly. An exhibit containing interactive data format risk/return summary information could be submitted under Rule 485(b) of the Securities Act, which provides for immediate effectiveness of amendments that make non-material changes, and would only need to contain the new exhibit, a facing page, a signature page, a cover letter explaining the nature of the amendment, and a revised exhibit index.

Request for Comment:

• Should we require interactive data information to be submitted before effectiveness of the related filing, *e.g.* , at the same time that the related filing is made? Or should we, as proposed, require interactive data information to be provided only after the related filing becomes effective? If so, is 15 business days after the effective date of the related filing an appropriate time period for filing the interactive data? Should the time period be shorter or longer, *e.g.,* 1 day, 5 days, 10 days, 20 days, 30 days? Would it be feasible and desirable to require interactive data to be submitted on the effective date of the related filing, either for filings that become effective automatically and/or for filings that are declared effective by the Commission staff? How would different requirements regarding the time of filing affect the usefulness of the interactive data, the ability of funds to file accurate interactive data, and the burdens of filing the data?

E. Web Site Posting of Interactive Data

We believe interactive data, consistent with our proposed rules, should be easily accessible for all investors and other market participants. As such disclosure becomes more widely available, advances in interactive data software, online viewers, search engines, and other Web tools may in turn facilitate access and usability of the data. Encouraging widespread accessibility to mutual funds' risk/return summary information furthers

[77] *See supra* note 48.

[78] *See* Summary Prospectus Proposing Release, *supra* note 15.

[79] *See* Summary Prospectus Proposing Release, *supra* note 15, 72 FR at 67802–03.

[80] *See* Summary Prospectus Proposing Release, *supra* note 15, 72 FR at 67803 and 67816 (Proposed Rule 498(f)(2)(ii) and (iii) under the Securities Act would require persons accessing documents on the Internet to be able to move back and forth between certain specified sections of the documents.).

[81] 17 CFR 230.497. Currently, Rule 497 prospectuses do not have a provision for exhibits, so additional EDGAR programming would be needed.

[82] Proposed General Instruction C.3.(g) of Form N–1A. This proposal differs from the voluntary program which does not impose a time limit for the filing of interactive data.

our mission to promote fair, orderly, and efficient markets, and facilitates capital formation. We believe Web site availability of the interactive data would encourage its widespread dissemination, thereby contributing to lower access costs for users. We therefore propose that each mutual fund be required to provide the same interactive data on its Web site, if it has one, that would be required to be provided to the Commission.[83] The interactive data on a fund's Web site would be required by the end of the business day on the earlier of the date that the interactive data is submitted to the Commission or is required to be submitted to the Commission.[84]

We believe access to the interactive data on fund Web sites would enable search engines and other data aggregators to more quickly and cheaply aggregate the data and make them available to investors because the data would be available directly from the mutual fund, instead of through third-party sources that may charge a fee. To help further our goals of decreasing user cost and increasing availability, we do not propose to allow mutual funds to comply with the Web posting requirement by including a hyperlink to the documents available electronically on the Commission's Web site.

We believe this requirement would be consistent with the increasing role that mutual fund Web sites perform in supplementing the information filed electronically with the Commission by delivering risk/return summary information and other disclosure directly to investors. For example, we recently proposed amendments that would permit a person to satisfy its mutual fund prospectus delivery obligations under the Securities Act by sending or giving the key information directly to investors in the form of a summary prospectus and providing the statutory prospectus on an Internet Web site.[85] We also note that mutual funds may satisfy certain disclosure obligations by posting required disclosures on their Web sites.[86] In addition, many mutual funds provide on their Web sites access to their prospectuses, statements of additional information, and other Commission filings.[87] This proposal would expand such Web site posting by requiring mutual funds with Web sites to post their interactive data as well.

Request for Comment:

- Should we adopt rules that require each mutual fund to post interactive data from its risk/return summary on its Web site, if it has one?
- What advantages, if any, would dual Internet and EDGAR availability have for individual investors, other users, search engines, software developers, and others involved in the extraction and processing of risk/return summary data? Would it be helpful if our Web site provided the option to download the interactive data submission from our Web site or the mutual fund's Web site? Would it add a significant burden if a mutual fund were required to submit with its interactive data the URL that would link specifically to that interactive data as posted on the mutual fund's Web site or, alternatively, link to a part of the mutual fund's Web site from which there would be easy access to the interactive data as posted there? What would facilitate the realization of any advantages of Web site posting, for example, the use of a standardized URL for interactive data? Would a standardized URL add significant cost to posting?
- Instead of requiring Web site posting, should we require that mutual funds disclose in their prospectuses, registration statements, shareholder reports, or elsewhere whether or not they provide free access to their interactive data on their Web sites and, if not, why not?
- What impact would be realized by mutual funds that do not currently provide Web sites? Would the proposed rules affect whether mutual funds create or maintain Web sites?
- Would Web site posting decrease the time and cost required for aggregators of mutual fund disclosure, individual investors, and other users to access disclosure formatted using interactive data?
- If we require Web site posting of interactive data, as proposed, should we also require that the Web site include language stating that the entire registration statement also is available for free at the Commission's Web site?

F. Accuracy and Reliability of Interactive Data

1.Voluntary Program

To help ensure the accuracy of interactive data in the voluntary program, the data has undergone validation upon receipt by our electronic filing system separate from the normal validation of the traditional format filing.[88] Potential liability also helps ensure the accuracy and reliability of the data. Although the voluntary program has provided limited protections from liability under the federal securities laws,[89] interactive data in the voluntary program are subject to the anti-fraud provisions of the federal securities laws. The voluntary program also encourages participants' efforts to create accurate and reliable interactive data that is the same as the corresponding disclosure in the traditional electronic format filing by providing that a participant is not liable for information in its interactive data that reflects the same information that appears in the corresponding portion of the traditional format filing, to the extent that the information in the corresponding portion of the traditional format filing was not materially false or misleading. To further encourage reasonable efforts to provide accurate interactive data, the voluntary program treats interactive data that do not reflect the same information as the official version as reflecting the official version if the volunteer meets several conditions. The volunteer must have made a good faith and reasonable attempt to reflect the same information as appears in the traditional format filing and, as soon as reasonably practicable after becoming aware of any difference, the volunteer must amend

[83] *See* proposed General Instruction C.3.(g) to Form N–1A.

[84] *See* Interactive Data Proposing Release, *supra* note 8 (proposing Rule 405(f)); proposed Rule 405(a). Proposed Rule 405(a) requires posting to a ''corporate'' Web site. For mutual funds, this would require posting to the fund's Web site.

The day the interactive data is submitted electronically to the Commission may not be the business day on which it was deemed officially filed. For example, a filing submitted after 5:30 p.m. generally is not deemed officially filed until the following business day. Under the proposed rules, the Web posting would be required to be posted at any time on the same day that the interactive data exhibit to a Form N–1A filing is deemed officially filed or required to be filed, whichever is earlier.

[85] *See* Summary Prospectus Proposing Release, *supra* note 15, 72 FR at 67798–99.

[86] *See, e.g.,* Securities Act Release No. 8458 (Aug. 23, 2004) [69 FR 52788 (Aug. 27, 2004)] (disclosure regarding portfolio managers); Securities Act Release No. 8408 (April 16, 2004) [69 FR 22300 (April 23, 2004)] (disclosure regarding market timing and selective disclosure of portfolio holdings); Securities Act Release No. 8393 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)] (shareholder reports and quarterly portfolio disclosure); Securities Act Release No. 8188 (Jan. 31, 2003) [68 FR 6564 (Feb. 7, 2003)] (disclosure of proxy voting policies and records); Exchange Act Release No. 47262 (Jan. 27, 2003) [68 FR 5348 (Feb. 3, 2003)] (disclosure of code of ethics).

[87] Mutual funds filing registration statements are required to disclose whether or not they make available free of charge on or through their Web site, if they have one, their statement of additional information and shareholder reports. Funds that do not make their reports available in that manner also must disclose the reasons that they do not. *See* Item 1(b)(1) of Form N–1A.

[88] If the traditional format filing meets its validation criteria, but any interactive data fail their own validation criteria, all interactive data are removed and the traditional format filing is accepted and disseminated without the interactive data file.

[89] Rule 402 of Regulation S–T provides these liability protections.

the interactive data to cause them to reflect the same information.[90]

2. Use of Technology to Detect Errors

Complete, accurate, and reliable prospectus and other disclosures are essential to investors and the proper functioning of the securities markets. Our proposed requirement to submit interactive data with mutual fund registration statements is designed to provide investors with new tools to obtain, review, and analyze information from mutual funds more efficiently and effectively. To satisfy these goals, interactive data must meet investor expectations of reliability and accuracy. Many factors, including mutual fund policies and procedures buttressed by incentives provided by the application of technology by the Commission, market forces, and the liability provisions of the federal securities laws, help further those goals.

Building on the validation criteria referenced above for interactive data in the voluntary program, we plan to use validation software to check interactive data for compliance with many of the applicable technical requirements and to help the Commission identify data that may be problematic. For example, we expect the validation software to:

- Check if required conventions (such as the use of angle brackets to separate data) are applied properly for standard and, in particular, non-standard special labels and tags;
- Identify, count, and provide the staff with easy access to non-standard special labels and tags;[91]
- Identify the use of practices, including some the XBRL U.S. Preparers Guide contains, that enhance usability;[92]
- Facilitate comparison of interactive data with disclosure in the corresponding traditional format data in the official filing;
- Check for mathematical errors; and
- Analyze the way that mutual funds explain how particular facts relate to one another.[93]

The availability of interactive data to the staff may also enhance its review of mutual fund filings. After the FDIC required submission of interactive data, it reported that its analysts were able to increase the number of banks they reviewed by 10% to 33%, and that the number of bank reports that failed to fully meet filing requirements fell from 30% to 0%. These bank reports require information that is more structured and less varied than the information we would require. As a result, the FDIC's efficiency gains from the use of interactive data likely would be greater than ours.

We believe analysts, individual investors, and others outside the Commission that use the interactive data submitted to us also will make use of software and other tools to evaluate the interactive data and, as a result, market forces will encourage mutual funds to provide interactive data that accurately reflects the corresponding traditional format data in the traditional format filing. For example, the use of non-standard labels or tags (extensions) could introduce errors, but we expect the open source and public nature of interactive data and the list of tags for risk/return summary information would enable software easily to detect and identify any modifications or additions to the approved list of tags. We believe such software and other technology will be widely available for free or at reasonable cost. Investors, analysts, and other users therefore would be able to identify the existence and evaluate the validity of any such modifications or additions. We also anticipate that mutual funds preparing their interactive data and investors, analysts, and other users would use such devices to search for and detect any changes made to the standard list of tags. Because analysts and other users would rapidly discover mistakes or alterations not consistent with the desired use of interactive data, mutual funds would have a powerful incentive to prepare such data with care and promptly to correct any errors.

With this proposal, we seek the rapid adoption and use of interactive data without imposing unnecessary cost and expense on mutual funds. We therefore propose that the interactive data itself provided to us generally would be subject to a liability regime under the federal securities laws similar to that governing the voluntary program. We also propose that viewable interactive data[94] as displayed through software available on the Commission's Web site, as described above and further discussed below, would be subject to the same liability under the federal securities laws as the corresponding portions of the traditional format filing.[95]

Interactive data would be subject to the following liability-related provisions:

- Deemed not filed or part of a registration statement or prospectus for purposes of sections 11 and 12 of the Securities Act;
- Deemed not filed for purposes of section 18 of the Exchange Act and section 34(b) of the Investment Company Act;
- Not otherwise subject to the liabilities of these sections;
- Subject to other liability under these Acts for the substantive content of the risk/return summary disclosures (as distinct from compliance with proposed Rule 405) in the same way and to the same extent as the corresponding information in the related traditional format official filing.[96] The content of the risk/return summary disclosures refers, for example, to the investment objectives and strategies, costs, risks, and past performance. The Rule 405 requirements generally refer to the process of tagging and formatting the content of the risk/return summary for the interactive data file;
- Deemed filed for purposes of (and, as a result, benefit from) Rule 103 of Regulation S–T;[97] and
- Protected from liability under these Acts for failure to comply with the requirements of proposed Rule 405 if the interactive data either:
  - ○ Met the requirements of proposed Rule 405 of Regulation S–T; or
  - ○ Failed to meet those requirements but the failure occurred despite the

[90] 17 CFR 232.402(b).

[91] For example, if a mutual fund uses the words ''redemption fees'' as the caption for a value data tagged as ''exchange fees,'' the software could flag the filing and bring it to the staff's attention.

[92] The XBRL U.S. Preparers Guide, available from the XBRL U.S. Web site, would provide guidance to facilitate preparing information in the interactive data format that we propose to require.

[93] The technology used to show these relationships is known as a ''linkbase.''

[94] Proposed Rule 11 of Regulation S–T would define viewable interactive data as ''Interactive Data in Viewable Form.'' *See* Interactive Data Proposing Release, *supra* note 8 (proposing Rule 11 of Regulation S–T). We are proposing technical amendments to include references to risk/return summary information in the definition.

[95] Proposed Rule 406 of Regulation S–T would set forth the liability applicable to interactive data and viewable interactive data that is displayed through software available on the Commission's Web site. Proposed Rule 406 also would clarify that disclosures in the traditional format part of an official filing on Form N–1A that contains the information corresponding to the interactive data remain subject to the federal securities laws as in the past and that nothing in proposed Rule 405 of Regulation S–T (setting forth content, format, and other requirements related to interactive data) or proposed Rule 406 would affect the liability otherwise applicable to the traditional format data. We are not proposing to modify proposed Rule 406 as set forth in our recently issued release. *See* Interactive Data Proposing Release, *supra* note 8 (proposing Rule 406 of Regulation S–T).

[96] Proposed Rule 11 of Regulation S–T would define ''Related Official Filing.'' *See* Interactive Data Proposing Release, *supra* note 8 (proposing amendments to Rule 11 of Regulation S–T). We are proposing technical amendments to the definition.

[97] The viewed data would be deemed filed for purposes of Rule 103 of Regulation S–T [17 CFR 232.103] and, as a result, in general, the mutual fund would not be subject to liability for electronic transmission errors beyond its control if the mutual fund corrects the problem through an amendment as soon as reasonably practicable after the fund becomes aware of the problem.

mutual fund's good faith and reasonable effort and the mutual fund corrected the failure as soon as reasonably practicable after becoming aware of it.

None of the proposed liability-related provisions for interactive data submitted to the Commission, however, would affect the application of the anti-fraud provisions under the federal securities laws, whether the interactive data is submitted to the Commission or posted on a fund's Web site.

Rule 405 is being proposed, in part, under the Commission's authority to specify information required to be submitted to the Commission in registration statements. To encourage accurate filing of interactive data without fear of making good faith errors, the Commission is proposing Rule 406.[98] Although not expressly addressed in proposed Rule 406, the Commission would have the authority to enforce compliance with proposed Rule 405 because it has the authority to enforce compliance with any of its rules.

We believe these liability-related provisions strike an appropriate balance between avoiding unnecessary cost and expense and encouraging accuracy in light of the nature of the interactive data to which they apply and the additional accuracy incentives that may be provided by our validation software and market forces.

Other aspects of the proposal would supplement the Commission's objective of supplying reliable and accurate information to investors. First, the risk/return summary information and other disclosures in the traditional format related official filing to which the interactive data relate would continue to be subject to the usual liability provisions of the federal securities laws. For example, the traditional format related official filing would continue to be subject to section 10(b) and Rule 10b–5 [99] of the Exchange Act and, in the appropriate circumstance, to section 11 of the Securities Act.

Second, we propose that the usual liability provisions of the federal securities laws also would apply to human-readable interactive data that is identical in all material respects to the corresponding data in the traditional format filing [100] as displayed by a viewer that the Commission provides. Under these circumstances, for example, a Form N–1A's viewable interactive data would be deemed filed and subject to section 11 of the Securities Act and section 34(b) of the Investment Company Act, consistent with the liability applicable to the corresponding part of the traditional format Form N–1A. In that regard, such viewable interactive data disclosure therefore would have exactly the same potential liability as the corresponding portions of the traditional format filing. We believe applying liability for such viewable interactive data displayed through software on the Commission's Web site would further investors' interests in filers providing accurate interactive data under our proposal.

We expect that each mutual fund would be in the best position to determine the appropriate manner in which to assure the accuracy of the interactive data it would be required to submit and the viewable interactive data that would result. We also expect that software providers and other private sector third parties would help develop procedures and tools to help in that regard. As an adjunct to those private sector efforts, we plan to make available to mutual funds, on an optional basis, the opportunity to help assure accuracy by making a test submission with the Commission or using software we provide to create viewable interactive data.

A mutual fund would have the opportunity to submit an interactive data exhibit as part of a test submission just as a filer can make test submissions today.[101] The validation system would process the test submission with an interactive data exhibit similar to the way it processes test submissions today. If it found an error, it would advise the filer of the nature of the error and as to whether the error was major or minor. As occurs in the voluntary program, a major error in an interactive data exhibit that was part of a live filing would cause the exhibit to be held in suspense in the electronic filing system while the rest of the filing would be accepted and disseminated if there were no major errors outside of the interactive data exhibit. If that were to happen, the filer would need to revise the interactive data exhibit to eliminate the major error and submit the exhibit as an amendment to the filing to which it is intended to appear as an exhibit. A minor error in an interactive data exhibit that was part of a live filing would not prevent the interactive data exhibit from being accepted and disseminated together with the rest of the filing if there were no major errors in the rest of the filing. We believe it would be appropriate to accept and disseminate a filing without the interactive data exhibit submitted with it if only the exhibit has a major error, in order to disseminate at least as much information at least as timely as would have been disseminated were there no interactive data requirement.

We are not proposing that mutual funds be required to involve third parties such as auditors or consultants in the creation of the interactive data provided as an exhibit to a mutual fund's Form N–1A filing, including assurance. We are taking this approach after considering various factors, including:

- The availability of a comprehensive list of tags for risk/return summary information from which appropriate tags can be selected, thus reducing a mutual fund's need to develop new elements;
- The availability of user-friendly software with which to create the interactive data file;
- The delayed compliance date, prior to which mutual funds may become familiar with the tagging of risk/return summary information;
- The availability of interactive data technology specifications, and of other XBRL U.S. and XBRL International resources for preparers of tagged data;
- The advances in rendering/presentation software and validation tools for use by preparers of tagged data that can identify the existence of certain tagging errors;
- The expectation that preparers of tagged data will take the initiative to develop sufficient internal review procedures to promote accurate and consistent tagging; and
- The mutual fund's and preparer's liability for the accuracy of the traditional format version of the risk/return summary information that will also be provided using the interactive data format.

Request for Comment:

- Do the proposed rules strike an appropriate balance to promote the availability of reliable interactive data without imposing undue additional costs and burdens? If not, what balance of liability will best encourage mutual funds to prepare reliable interactive data without subjecting them to undue fear of mis-tagging? How does the ''extensibility'' of interactive data, *i.e.* , a mutual fund's ability to customize the standard list of tags to correspond more closely to the fund's particular risk/return summary information, affect your answer?

[98] *See* Interactive Data Proposing Release, *supra* note 8 (proposing Rule 406).

[99] 17 CFR 240.10b–5.

[100] The human-readable interactive data would be identical to the corresponding data in the traditional format filing if the mutual fund complied with the interactive data tagging requirements of proposed Rule 405.

[101] The EDGAR Filer Manual addresses test submissions primarily at section 6.6.5 of Volume II.

• What are the risks to investors under the proposed liability rules? Will investors still find the interactive data sufficiently reliable to use it?

• Should interactive data be subject to liability if a mutual fund does not tag its risk/return summary information in a manner consistent with the standards approved by the Commission, irrespective of the mutual fund's good faith effort? If the answer is yes, what should the mutual fund's liability be for such errors, and should liability attach even if the mistake is inadvertent? What if the error is the result of negligent tagging practices, but there was no affirmative intent to mislead?

• If interactive data are subject to liability as proposed, is it necessary or appropriate for viewable interactive data to be subject to liability as and to the extent proposed or otherwise? Should the answer depend on the degree of liability to which the interactive data are subject? Should viewable interactive data be subject to liability in a manner or to an extent different than as proposed?

• Should any or all interactive data be deemed filed for purposes of Section 34(b) of the Investment Company Act and, if so, should it be regardless of compliance with proposed Rule 405 or a filer's good faith and reasonable efforts to comply?

• Should the liability for interactive data be exactly the same as it is for XBRL-Related Documents under the voluntary program?

• Would software be commercially available and reasonably accessible to all required interactive data filers, investors, and analysts that would make detection of tagging errors, such as the use of inappropriate tags or improper extensions, easy and cost-effective? If so, would such monitoring by investors and analysts likely discourage the improper use of extensions or negligent conduct in the tagging process?

• Would the use of software to search for and detect any differences between a mutual fund's interactive data and the Commission-approved interactive data tags and other attributes depend on the degree of investor interest or analysis by third party information providers?

• Should a rule expressly state that the Commission retains the authority to enforce compliance with proposed Rule 405?

• Should we require the involvement of auditors, consultants, or other third parties in the tagging of data? If assurance should be required, what should be its scope, and should any such requirement be phased in?

• Should we phase in increasing levels of liability over time? Are the proposed limitations on liability necessary and appropriate at the outset, for example, the first year that a mutual fund is subject to the interactive data requirement, but inappropriate at a later time? Should we require that interactive data be subject to more liability later?

• Should the validation software, as contemplated, cause an interactive data exhibit with a major error to be held in suspense in the electronic filing system while the rest of the filing would be accepted and disseminated if there were no major errors outside of the interactive data exhibit? In that case, should the validation software hold the entire filing in suspense or reject or accept the entire filing or interactive data exhibit?

G. Required Items

1. Data Tags

To comply with the proposed rules, mutual funds would be required to tag their risk/return summary information using the most recent list of tags for mutual fund risk/return summaries, as released by XBRL U.S. and required by the EDGAR Filer Manual. The ICI's risk/return summary list of tags received acknowledgement from XBRL International in June 2007. The Commission anticipates entering into a contract to update the architecture of the list of tags and conform the list of tags to any changes in the risk/return summary that we adopt pursuant to a pending rule proposal.[102]

Updates to the list of tags for risk/return summary reporting may be posted and available for downloading from time to time to reflect changes in the risk/return summary requirements, refinements to the list of tags, or for other reasons. To provide mutual funds sufficient time to become familiar with any such updates, we anticipate giving advance notice before requiring use of an updated list of tags. Based on experience to date with the list of tags for risk/return summaries, we believe that, with the enhancements to the list of tags that XBRL U.S. will be developing, the list of tags will be sufficiently developed to support the interactive data disclosure requirements in the proposed rules.

One of the principal benefits of interactive data is its extensibility—that is, the ability to add to the standard list of tags in order to accommodate unique circumstances in a mutual fund's particular disclosures. The use of customized tags, however, may also serve to reduce the ability of users to compare similar information across mutual funds. In order to promote comparability across funds, our proposed rules would limit the use of extensions to circumstances where the appropriate element does not exist in the standard list of tags.[103] We also are proposing that wherever possible, preparers change the label for an element that exists in the standard list of tags, instead of creating a new customized tag.[104]

Under Item 401(c) of Regulation S–T, voluntary filers' interactive data elements must reflect the same information as the corresponding traditional format elements. Further, no data element can be ''changed, deleted or summarized'' in the interactive data file.[105] We do not propose to change this equivalency standard for risk/return summary information provided in interactive data format as required by the proposed rules.[106]

Request for Comment:

• Is our focus on comparability appropriate? Instead of stressing ease of risk/return summary comparability, should our rules permit greater use of customized data tags?

• Should we codify any other principles to encourage comparability without unduly reducing the extensibility of interactive data?

2. Regulation S–T and the EDGAR Filer Manual

We propose to require that mutual funds provide interactive data in the form of exhibits to the related registration statement on Form N–1A.[107] Interactive data would be required to comply with our Regulation S–T [108] and the EDGAR Filer Manual. The EDGAR Filer Manual is available on our Web site. It includes technical information for making electronic filings to the Commission. Volume II of this manual includes guidance on the preparation, submission, and validation of interactive data submitted under the voluntary program. Before adoption of our proposed rules, we plan to update

[102] *See* Summary Prospectus Proposing Release, *supra* note 15.

[103] Proposed Rule 405(c)(1)(iii)(B) as proposed in Interactive Data Proposing Release, *supra* note 8.

[104] Proposed Rule 405(c)(1)(iii)(A) as proposed in Interactive Data Proposing Release, *supra* note 8.

[105] Proposed Rule 405(c)(2) as proposed in Interactive Data Proposing Release, *supra* note 8

[106] *Id.*

[107] The requirement to submit interactive data as an exhibit would appear in proposed General Instruction C.3.(g) of Form N–1A.

[108] Proposed Rule 405 of Regulation S–T would directly set forth the basic tagging and posting requirements for the XBRL data and require compliance with the EDGAR Filer Manual. Consistent with proposed Rule 405, the EDGAR Filer Manual would contain the detailed tagging requirements.

our manual with additional instructions for filers of interactive data.

In addition to both Regulation S–T, which would include the rules we are proposing, and the instructions in our EDGAR Filer Manual, filers may access other sources for guidance in tagging their financial information. These include the XBRL U.S. Preparers Guide; user guidance accompanying tagging software; and financial printers and other service providers. New software and other forms of third-party support for tagging risk/return summary information using interactive data are also becoming available.

Request for Comment:

- What specific guidance should be provided in Regulation S–T for interactive data filers?
- Does the XBRL U.S. Preparers Guide provide useful guidance to promote consistent tagging among various mutual funds?
- Is the user guidance accompanying tagging software, and the guidance available from financial printers and other service providers, helpful for filers to tag their risk/return summary information? What other sources of guidance might prove useful?

H. Consequences of Non-Compliance and Hardship Exemption

We propose that if a filer does not provide the required interactive data submission, or post the interactive data on its Web site, by the required due date, the filer's ability to file post-effective amendments under Rule 485(b), which provides for immediate effectiveness of amendments that make non-material and other changes, would be automatically suspended.[109] The suspension would become effective at the time that the filer fails to meet the requirement to submit or post interactive data and would terminate as soon as the filer has submitted and posted that data. The suspension would apply to post-effective amendments filed after the suspension becomes effective, but would not apply to post-effective amendments that were filed before the suspension became effective. The suspension would not apply to post-effective amendments filed solely for purposes of submitting interactive data, which would enable a filer to cure its failure to submit interactive data by filing an amendment under Rule 485(b). We believe that precluding the use of immediate effectiveness of post-effective amendments during any period of failure to comply would appropriately direct attention to the proposed interactive data requirement without permanently suspending a mutual fund's ability to file post-effective amendments under Rule 485(b) once the fund has remedied the failure.

If the proposed rules are adopted, we anticipate that we would not interpret Rule 303,[110] which restricts the ability of registered investment companies to incorporate by reference into an electronic filing documents that have not been filed in electronic format, to apply to the failure to file Interactive Data Files. Thus, as long as the traditional format electronic filing has been made as required, the failure to file a required Interactive Data File would not affect a mutual fund's ability to incorporate by reference the mutual fund's prospectus. For example, if we were to adopt as proposed our proposed rules regarding a summary prospectus for mutual funds, we anticipate that a mutual fund could incorporate by reference its statutory prospectus into its summary prospectus as permitted by those proposed rules, notwithstanding the fund's failure to file required interactive data.[111]

Consistent with the treatment of other applicable reporting obligations, we propose to provide a continuing hardship exemption for the inability to timely electronically submit interactive data. Rule 202 of Regulation S–T provides for continuing hardship exemptions.[112]

Rule 202 permits a filer to apply in writing for a continuing hardship exemption if information otherwise required to be submitted in electronic format cannot be so filed without undue burden or expense. If the staff, through authority delegated from the Commission, grants the request, the filer must file the information in paper by the applicable due date and file a confirming electronic copy if and when specified in the grant of the request.

We propose to revise Rule 202 to provide that a grant of a continuing hardship exemption for interactive data would not require a paper submission.[113] If the filer did not electronically submit the interactive data by the end of the period for which the exemption was granted, the filer's ability to file post-effective amendments under Rule 485(b) would be suspended until it did electronically submit the interactive data.[114] Similarly, we propose to revise Rule 202 to provide an essentially mirror-image exemption from the proposed requirement for a mutual fund that has a Web site to post the interactive data on its Web site.[115]

Request for Comment:

- Are the consequences for failure to comply with the interactive data submission requirements appropriate?
- Should we suspend the ability of a mutual fund to file post-effective amendments under Rule 485(b) if it does not comply with the proposed rules? Should the proposed rules provide similar treatment whether the failure to comply relates to interactive data submission or to Web site posting? Should the suspension apply to the particular fund that failed to comply, all series of a registrant that failed to comply, or all funds of a complex that failed to comply?
- Should the proposed rules treat a mutual fund's compliance with interactive data requirements as an express condition to the mutual fund's related registration statement or post-effective amendment becoming effective?
- Should the failure to file or post interactive data as required restrict a mutual fund's ability to incorporate by reference the fund's statutory prospectus, including under our proposed rules relating to a mutual fund summary prospectus?
- Does our proposed rule strike the correct balance of positive and negative consequences when a mutual fund meets its requirements to provide traditional format documents but fails to provide interactive data?
- Do commenters believe that the proposed revisions to the continuing hardship exemption would be sufficient to cover unanticipated technical difficulties associated with interactive data? If insufficient, why would they be insufficient and how should the hardship exemption be tailored to address technical difficulties associated with interactive data?
- Should we provide a temporary hardship exemption? If so, would six business days be an appropriate period for the temporary hardship exemption to apply?[116] If not, would a shorter or longer period be appropriate, and why?

[109] Proposed Rule 485(c)(3).

[110] Rule 303 of Regulation S–T.

[111] *See* Summary Prospectus Proposing Release, *supra* note 15.

[112] Rule 201 of Regulation S–T provides for temporary hardship exemptions. We are not proposing a temporary hardship exemption because our proposal would provide a mutual fund with a 15-business day period for submitting the interactive data file for a related Form N–1A filing.

[113] *See* Proposed Rule 202 as proposed in Interactive Data Proposing Release, *supra* note 8.

[114] Proposed amendment to Note 4 to Rule 202 as proposed in Interactive Data Proposing Release, *supra* note 8; Proposed Rule 485(c)(3).

[115] *Id.*

[116] *See* Proposed Rule 201 as proposed in Interactive Data Proposing Release, *supra* note 8 (proposing a six-business-day temporary hardship exemption for financial statement filers).

I. Changes to the Voluntary Program

If we adopt rules requiring mutual funds to submit risk/return information in interactive data format, we intend that mutual funds would no longer be able to submit risk/return summary information in interactive data format through the voluntary program after the compliance date for the mandatory rules. We are proposing to amend Rule 8b–33 to remove risk/return summary information as a category of information permitted to be submitted under the voluntary program. In addition, we are proposing technical amendments to other rules to reflect this.[117]

Further, in order to encourage participation in the voluntary program for tagging investment company financial information, we are proposing amendments to enable investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X to submit exhibits containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format.[118] As with the current voluntary program, volunteers could participate, without pre-approval, merely by submitting a tagged *Schedule I—Investments in Securities of Unaffiliated Issuers* (''Schedule I'').[119] To facilitate this, the Commission anticipates entering into a contract to develop a list of tags that could be used to tag portfolio holdings.

Currently, the interactive data furnished under the voluntary program must consist of at least one item from a list of enumerated mandatory content (''Mandatory Content''), including financial statements, earnings information, and, for registered management investment companies, financial highlights or condensed financial information and risk/return summary information set forth in Items 2 and 3 of Form N–1A.[120] We are adding Schedule I information as a separate item of Mandatory Content that participants can submit in order to give volunteers greater flexibility in tagging fund data.

Investors, financial intermediaries, and third party information providers, among others, use the portfolio holdings data contained in Schedule I to make decisions concerning the purchase and continued holding of funds and for other purposes. Portfolio holdings data promises to be even more useful to these various stakeholders if this data is interactive. In addition, allowing volunteers to submit tagged portfolio holdings information without having to submit other financial information in interactive data format would increase the range of options for participation in the voluntary program and encourage increased participation.

Under the current voluntary program, any official filing with which tagged exhibits are submitted must disclose that the financial information is ''unaudited'' or ''unreviewed,'' as applicable and that the purpose of submitting the tagged exhibits is to test the related format and technology and, as a result, investors should not rely on the exhibits in making investment decisions.[121] We believe that this cautionary disclosure should also be tagged and included within each interactive data exhibit, in order to help alert investors and other users that the exhibits should not be relied on in making investment decisions. Accordingly, we are proposing that this disclosure be required in the exhibits submitted pursuant to the voluntary program as a tagged data element,[122] consistent with how the cautionary disclosure is presented in risk/return summary exhibits under the current voluntary program.

Request for Comment:

- Is allowing the tagging of fund data contained in Schedule I separately from other investment company financial information an appropriate next step in the voluntary program for investment companies? Is there other investment company information that should be included in the voluntary program?
- What effect would tagged data have on investors', analysts', and other users' ability to analyze investment company portfolio holdings? Are there any potential problems related to providing investment company portfolio holdings in interactive data format? For example, could this facilitate the front-running of investment company portfolio transactions or other behavior that could harm investors?
- Is the tagging of fund data contained in Schedule I useful on a stand-alone basis? Should we instead require a fund that submits tagged data for Schedule I to also provide tagged data for Schedules II through V,[123] as Schedules I through V are often presented together in fund financial statements? Should we allow funds to tag any or all of Schedules I through V in the voluntary program without tagging other financial information? Are there particular Schedules, or particular combinations of Schedules, that should be permitted to be tagged in the voluntary program without tagging other financial information?
- How would allowing volunteers to submit an interactive data exhibit consisting of Schedule I information on a stand-alone basis affect participation in the voluntary program? Does the tagging of Schedule I information separately from other investment company financial information present any technical concerns that would affect participation in the voluntary program?
- Should we require cautionary disclosure in the tagged schedule of portfolio holdings as a tagged data element?
- Is additional or different language necessary for cautionary disclosure?
- Has development of a list of tags for portfolio holdings advanced sufficiently to permit tagging of Schedule I on a stand-alone basis? If not, what further steps are needed?

III. General Request for Comments

We request comment on the specific issues we discuss in this release, and on any other approaches or issues that we should consider in connection with the proposed amendments. We seek comment from any interested persons, including those required to file information with us on the EDGAR system, as well as investors, disseminators of EDGAR data, industry analysts, EDGAR filing agents, and any other members of the public.

[117] *See* proposed Rule 401(a); proposed Rule 401(d)(1)(i); proposed Rule 401(d)(2)(i). We are also proposing to delete current Rule 401(b)(1)(iv), which provides the option to file risk/return summary information under the voluntary program, and to replace it with the option to file the portfolio holdings schedule on a stand-alone basis described below.

[118] Proposed Rule 401(b)(1)(iv) (designating *Schedule I—Investments in securities of unaffiliated issuers* as mandatory content under the voluntary program). If rules requiring interactive data financial information are adopted, we anticipate that the voluntary program would be modified to permit participation only by registered investment companies, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X. *See* Interactive Data Proposing Release, supra note 8 (proposed Rule 401(a)).

[119] Rule 12–12 of Regulation S–X [17 CFR 210.12–12].

[120] Rule 401(b)(1) of Regulation S–T [17 CFR 232.401(b)(1)].

[121] Rule 401(d)(1)(ii) of Regulation S–T [17 CFR 232.401(d)(1)(ii)].

[122] *See* proposed Rule 401(d)(2).

[123] *Schedule II—Investments—other than securities*, Rule 12–13 of Regulation S–X [17 CFR 210.12–13]; *Schedule III—Investments in and advances to affiliates*, Rule 12–14 of Regulation S–X [17 CFR 210.12–14]; *Schedule IV—Investments—securities sold short*, Rule 12–12A of Regulation S–X [17 CFR 210.12–12A]; and *Schedule V—Open option contracts written*, Rule 12–12B of Regulation S–X [17 CFR 210.12–12B].

IV. Paperwork Reduction Act

The proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995, or PRA.[124] The purpose of the proposed amendments is to make risk/return summary information easier for investors to analyze and to assist in automating regulatory filings and business information processing. We are submitting the proposed amendments to the Office of Management and Budget (OMB) for review in accordance with the PRA.[125] An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The title for the new collection of information for submitting risk/return summary information in interactive data format that the proposed amendments would establish is ''Mutual Fund Interactive Data'' (OMB Control No. 3235–XXXX). This collection of information relates to already existing regulations and forms adopted under the Securities Act, the Exchange Act, and the Investment Company Act that set forth disclosure requirements for mutual funds and other issuers. The proposed amendments, if adopted, would require mutual funds to submit their risk/return summary information in interactive data format and post it on their Web sites, if any, in interactive data form. The specified risk/return summary information already is and would continue to be required to be submitted to the Commission in traditional format under existing disclosure requirements. Compliance with the proposed amendments would be mandatory beginning with initial registration statements, and post-effective amendments that are annual updates to effective registration statements, that become effective after December 31, 2009.[126] The information required to be submitted would not be kept confidential by the Commission.

The title for the collection of information for submitting portfolio holdings in interactive data format is ''Voluntary XBRL-Related Documents'' (OMB Control No. 3235–0611). The proposed amendments would permit investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X to submit exhibits containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format. Compliance with the proposed amendments would be voluntary. The information required to be submitted would not be kept confidential by the Commission.

A. Reporting and Burden Estimate

1. Submission of Risk/Return Summary Information Using Interactive Data

Form N–1A (OMB Control No. 3235–0307) under the Securities Act and the Investment Company Act[127] is used by mutual funds to register under the Investment Company Act and to offer their securities under the Securities Act. The information required by the new collection of information we propose, would correspond to the risk/return summary information now required by Form N–1A and would be required to appear in exhibits to Form N–1A and on mutual funds' Web sites.

Based on estimates from voluntary program participant responses to a questionnaire and our experiences with the voluntary program, we estimate that interactive data filers would require an average of approximately 13 burden hours to tag risk/return summary information in the first year, and the same task in subsequent years would require an average of approximately 11 hours.[128] The average annual burden over a three-year period is estimated at approximately 12 hours.[129] Based on estimates of 8,810 mutual funds submitting interactive data documents,[130] each incurring 12 hours per year on average, we estimate that, in the aggregate, interactive data adoption would result in an additional 105,720 burden hours, on average, for all mutual funds for each of the first three years.[131] Converted into dollars, this amounts to approximately $22,500,000.[132]

We further estimate that mutual funds would require an average of approximately 1 burden hour to post interactive data to their Web sites. Based on estimates of 8,810 mutual funds posting interactive data, each incurring 1 burden hour per year on average, we estimate that, in the aggregate, adoption of Web site posting requirements would result in an additional 8,810 burden hours for all mutual funds.[133] Converted into dollars, this amounts to approximately $2,200,000.[134]

We also estimate that software and consulting services would be used by mutual funds for an increase of approximately $803 per mutual fund.[135] Based on the estimate of 8,810 mutual funds using software and consulting services at an annual cost of $803 we estimate that, in the aggregate, the total external costs to the industry would be approximately $7,100,000.[136]

Regulation C and Regulation S–T

Regulation C (OMB Control No. 3235–0074) describes the procedures to be followed in preparing and filing registration statements with the Commission. Regulation S–T (OMB Control No. 3235–0424) specifies the

[124] 44 U.S.C. 3501 *et seq.*

[125] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[126] *See* Part II.B.

[127] 17 CFR 239.15A; 17 CFR 274.11A.

[128] The average burden hours for the first and subsequent submissions were calculated using data collected from 6 responses to a voluntary program participant questionnaire from mutual funds that participated in the voluntary program. *See* Part V, *infra.*

[129] (13.33 hours for the first submission + 11.275 hours for the second submission + 11.275 hours for the third submission) ÷ 3 years = approximately 12 hours.

[130] This estimate is based on analysis by the Division of Investment Management staff of publicly available data.

[131] 8,810 mutual funds × 12 incremental burden hours per mutual fund = 105,720 burden hours.

[132] This cost increase is estimated using an estimated hourly wage rate of $213.00 ((105,720 burden hours) × $213.00 hourly wage rate = $22,518,360 total incremental internal cost). The estimated wage figure is based on published rates for compliance attorneys and programmer analysts, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of $270 and $194, respectively. *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2007* (Sept. 2007) (''SIA Report''). The estimated wage rate was further based on the estimate that compliance attorneys would account for one quarter of the hours worked and senior system analysts would account for the remaining three quarters, resulting in a weighted wage rate of $213.00 (($270 × .25) + ($194 ×.75)).

[133] 8,810 mutual funds × 1 burden hour per mutual fund = 8,810 burden hours.

[134] ($250 × 1 hour × 8,810 mutual funds). This cost estimate is based on informal discussions with a limited number of persons believed to be generally knowledgeable about preparing, submitting, and posting interactive data. *See* Part V, *infra.*

[135] For purposes of this estimate, we assumed that the largest 50 fund complexes would develop software in-house incurring costs of $125,000 in the first year. Assuming that the largest 50 fund complexes would develop software for use in all of their funds, and that their funds encompass 80% of the number of funds (7,048), then the average first year cost for those funds would be ($125,000 × 50)/7,048 = $887. Therefore, for those funds using software developed internally, the average 3 year cost would be approximately $829 ($887 in the first year + $800 in the second year + $800 in the third year) ÷ 3 years = approximately $829. The average 3 year cost for those funds that use commercial software would be $700 ($500 in the first year + $800 in the second year + $800 in the third year) ÷ 3 years = $700. Assuming 80% of funds incurred costs of $829 and 20% of funds incurred costs of $700, the average software and consulting cost per mutual fund would be approximately $803. These estimates were derived from responses to a voluntary program questionnaire. *See* Part V, *infra.*

[136] 8,810 mutual funds × $803 = approximately $7,100,000.

requirements that govern the electronic submission of documents. The proposed changes to these items would add and revise rules under Regulations C and S–T. The filing requirements themselves, however, are included in Form N–1A and we have reflected the burden for these new requirements in the burden estimate for Mutual Fund Interactive Data. The rules in Regulations C and S–T do not impose any separate burden.

2. Changes To the Voluntary Program

We are proposing to decrease the burden associated with the existing collection of information for Voluntary XBRL-Related Documents to reflect the proposed amendments. If we adopt rules requiring mutual funds to submit risk/return information in interactive data format, we intend that mutual funds would no longer be able to submit risk/return summary information in interactive data format through the voluntary program after the compliance date for the mandatory rules.

When we adopted the amendments to expand the voluntary program to enable mutual funds voluntarily to submit risk/return summary information in interactive data format, we estimated an increase to the existing collection of information for Voluntary XBRL-Related Documents.[137] We estimated that 10% of the approximately 545 fund complexes that have mutual funds, or 55 fund complexes, would each submit documents containing tagged risk/return summary information for one mutual fund.[138] We further estimated that the initial creation of tagged documents containing risk/return summary information would require, on average, approximately 110 burden hours per mutual fund, and the creation of such tagged documents in subsequent years would require an average 10 burden hours per mutual fund. Because the PRA estimates represent the average burden over a three-year period, we estimated the average hour burden for the submission of tagged documents containing risk/return summary information for one mutual fund to be approximately 43 hours.[139]

Based on the estimates of 55 participants submitting tagged documents containing risk/return summary information for one mutual fund once per year and incurring 43 hours per submission, we estimated that, in the aggregate, the industry would incur an additional 2,365 burden hours associated with the amendments.[140] We further estimated that 75% of this burden increase, or approximately 1,774 hours, would be borne internally by the mutual fund complexes. We estimated that this internal burden increase converted to dollars would amount to a total annual increase of internal costs of approximately $393,828.[141]

We also estimated that 25% of the burden, or approximately 591 hours, would be outsourced to external professionals and consultants retained by the mutual fund complex at an average cost of $256.00 per hour for a total annual increase of approximately $151,296.[142] In addition, we estimated that the cost of licensing software would be $333 per participant per year, for a total annual increase of $18,315.[143] Altogether, we estimated the total annual increase in external costs related to the amendments would be $169,611.[144]

Given that mutual funds would no longer be able to submit risk/return summary information in interactive data format through the voluntary program if the proposed amendments are adopted, we would reduce the internal hour burden associated with the voluntary program by 1,774 hours and the internal cost burden by $393,828. We would also reduce the external cost burden by $169,611.

We also are proposing amendments to the voluntary program to enable investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X to submit exhibits containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format. As with the current voluntary program, volunteers could participate, without pre-approval, merely by submitting Schedule I in interactive data format.[145]

Investors, financial intermediaries, and third party information providers, among others, use the portfolio holdings data contained in Schedule I to make decisions concerning the purchase and continued holding of funds and for other purposes. Portfolio holdings data promises to be even more useful to these various stakeholders if this data is interactive. In addition, allowing volunteers to submit tagged portfolio holdings information without having to submit other financial information in interactive data format would increase the range of options for participation in the voluntary program and encourage increased participation.

We estimate that 20 registrants would choose to submit a schedule of portfolio holdings in interactive data format. We believe that investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X would participate, given the flexibility provided by a new option to submit exhibits containing just portfolio holdings information in interactive data format.

Submission of portfolio holdings information in interactive data format would not affect the burden of preparing the registrants' traditional format filings. In order to provide portfolio holdings information in interactive data format, a participating registrant would have to tag Schedule I and submit the resulting interactive data file as an exhibit to its filing on Form N–CSR or Form N–Q.[146] The Commission anticipates entering into a contract to develop a list of tags that could be used to tag portfolio holdings. Based on our experience with mutual funds that have submitted risk/return summary information in the current voluntary program, we estimate that the initial creation of portfolio holdings information in interactive data format would require, on average, approximately 12 burden hours per registrant,[147] and the creation of such information in interactive data format in subsequent years would require an average 10 burden hours per

[137] *See* Voluntary Program Adopting Release, *supra* note 16.

[138] In the case of a mutual fund with multiple series, our estimate treated each series as a separate mutual fund.

[139] (110 hours in the first year + 10 hours in the second year + 10 hours in the third year) ÷ 3 years = 43 hours.

[140] 55 documents per year × 43 hours per submission = 2,365 hours.

[141] *See* note 82 of the Voluntary Program Adopting Release, *supra* note 16.

[142] *See* note 83 of the Voluntary Program Adopting Release, *supra* note 16.

[143] $333 per participant × 55 participants = $18,315.

[144] This annual total consisted of $151,296 in outside professional costs plus $18,315 in software costs.

[145] Rule 12–12 of Regulation S–X [17 CFR 210.12–12].

[146] Form N–CSR [17 CFR 249.331; 17 CFR 274.128]; Form N–Q [17 CFR 249.332; 17 CFR 274.130].

[147] Mutual funds submitting risk/return summary information in our voluntary program indicated that an initial submission in the voluntary program took approximately 13 hours of labor. Given that the submission of portfolio holdings in interactive data format is less complex than the submission of risk/return summary information in interactive data format but potentially requires the tagging of many more individual items, we estimate that the initial creation of interactive data files containing portfolio holdings information would require, on average, approximately 12 burden hours per volunteer.

registrant.[148] Because the PRA estimates represent the average burden over a three-year period, we estimate the average hour burden for the submission of portfolio holdings information in interactive data format for one registrant to be approximately 11 hours.[149]

Based on the estimate of 20 registrants submitting interactive data files containing portfolio holdings information once each year and incurring 11 hours per submission we estimate that, in the aggregate, the industry would incur an additional 220 burden hours associated with the proposed amendments.[150] We estimate that this internal burden increase converted to dollars would amount to approximately $47,000.[151]

We also estimate that external professionals and consultants would be retained by the registrant for an increase of approximately $600.00.[152] It is our understanding that annual software licensing costs generally would be included in the cost of hiring external professionals and consultants.[153] Based on the estimate of 20 registrants retaining external professionals and consultants at an annual cost of $600.00 we estimate that, in the aggregate, the total external cost to the industry would be $12,000.[154]

As a result of the changes to the voluntary program, we therefore estimate a total decrease in internal burden hours of approximately 1,600 [155] and a total decrease in internal costs of approximately $347,000.[156] We further estimate a total decrease in external costs of approximately $158,000.[157]

B. Request for Comments

We solicit comment on the expected Paperwork Reduction Act effects of the proposed amendments, including the following:

- The accuracy of our estimates of the additional burden hours that would result from adoption of the proposed amendments;
- Whether the proposed new collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Any effects of the proposed amendments on any other collections of information not previously identified.

Any member of the public may direct to us any comments concerning these burden estimates and suggestions for reducing the burdens. Persons submitting comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Office of the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–12–08. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–12–08, and be submitted to the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost/Benefit Analysis

A. Submission of Risk/Return Summary Information Using Interactive Data

The proposed rules would require submission of interactive data-formatted risk/return summary information and the posting of such information on a mutual fund's Web site, if any. We believe that the proposed rules likely would result in the benefits and costs described below. We base our belief on an economic analysis of data obtained from several sources, including voluntary program participant responses to a staff-prepared questionnaire and our experiences with the voluntary program.[158]

Interactive data are intended to remove a barrier in the flow of information between mutual funds and users of information that is conveyed through mutual fund disclosures. This should enable less costly dissemination of information and thereby improve the allocation of capital. The cost of implementation will depend primarily on the costs of transition by mutual funds to the new mode of reporting. The magnitudes of these benefits and costs from any individual mutual fund's adoption of interactive data reporting will depend on the number of other mutual funds that also adopt and on the availability of supporting software and other infrastructures that enable analysis of the information. To the extent that submitted information allows investors to make investment decisions based on market-wide comparison and analysis, the value to the investors of the reported information

[148] Mutual funds submitting risk/return summary information in the current voluntary program indicated that each set of submissions, after the initial set, would take approximately 11 burden hours, or 2 hours less than the initial submission. We estimate that the reduction in burden hours for subsequent submissions of portfolio holdings information in interactive data format would be a similar 2 hour reduction, or approximately 10 burden hours per volunteer.

[149] (12 hours in the first year + 10 hours in the second year + 10 hours in the third year) ÷ 3 years = approximately 11 hours. While the PRA requires an estimate based on a hypothetical three years of participation, a registrant, as noted earlier, could participate in the voluntary program by submitting portfolio holdings information in interactive data format over a shorter period or even just once as the registrant chooses.

[150] 20 documents per year × 11 hours per submission = 220 hours. We note that mutual funds submit portfolio holdings information to the Commission four times per year. However, for purposes of our analysis, we estimate that mutual funds choosing to participate in the voluntary program would submit portfolio holdings information in interactive data format once each year.

[151] This cost increase is estimated by multiplying the increase in annual internal hour burden (220) by the estimated hourly wage rate of $213.00. *See supra* note 132.

[152] ($100.00 in the first year + $800.00 in the second year + $800.00 in the third year) ÷ 3 years = approximately $600.00. Mutual funds participating in our voluntary program for the submission of risk/return summary information in interactive data format indicated an initial external cost of $100.00 for the hiring of external professionals and consultants and projected an annual cost of $800.00 for external service providers going forward. The increase going forward was due to the fact that a couple of participants indicated that their external service provider had waived its fee for the initial submission.

[153] We note that one respondent spent over $100,000 internally to develop software to submit risk/return summary information in interactive data format. We did not include this number in our calculations as this software was developed solely for purposes of submitting risk/return summary information and not for submitting financial information in interactive data format. *See infra* note 170.

[154] 20 registrants submitting interactive data files under the voluntary program × $600.00 = $12,000.

[155] (1,774 hours for the removal of risk/return summary information from the voluntary program − 220 hours for the submission of schedule of portfolio holdings in interactive data format = approximately 1,600 hours.)

[156] ($393,828 for the removal of risk/return summary information from the voluntary program − $47,000 for the submission of schedule of portfolio holdings in interactive data format = approximately $347,000.)

[157] ($169,611 for the removal of risk/return summary information from the voluntary program − $12,000 for the submission of schedule of portfolio holdings in interactive data format = approximately $158,000.)

[158] The proposed required program, similar to the voluntary program, would require use of interactive data in XBRL format.

tends to increase with the total number of mutual funds adopting the regime. Likewise, mutual funds' incentives to report their information using interactive data depends on the interest level of the investors in this mode of reporting. By mandating implementation, the rule will expand the network of adopters and thereby create positive network externalities of reported information for the investors.

1. Benefits of Interactive Data Submissions and Web Site Posting

The proposed rules have the potential to benefit investors both directly and by facilitating the exchange of information between mutual funds and the third party information providers and other intermediaries who receive and process mutual fund disclosures.

Information Access

Benefits of the proposed rulemaking accrue from the acceleration of market-wide adoption of interactive data format reporting. The magnitudes of the benefits thus depend on the value to investors of the new reporting regime relative to the old reporting regime and on the extent to which the mandated adoption speeds up the market-wide implementation.

Requiring mutual funds to file their risk/return summary information using the interactive data format would enable investors, third party information providers, and the Commission staff to capture and analyze that information more quickly and at a lower cost than is possible using the same information provided in a static format.[159] Even though the new regime does not require any new information to be disclosed or reported, certain benefits accrue when mutual funds use an interactive data format to report their risk/return summary information. These include the following. Through interactive data, what is currently static, text-based information could be dynamically searched and analyzed, facilitating the comparison of mutual fund cost, performance, and other information across multiple classes of the same fund and across the more than 8,000 funds currently available. Any investor with a computer would have the ability to acquire and download data that have generally been available only to intermediaries and third-party analysts. For example, users of risk/return summary information could download it directly into spreadsheets, analyze it using commercial off-the-shelf software, or use it within investment models in other software formats. Also, to the extent investors currently are required to pay for access to mutual fund risk/return summary information that has been extracted and reformatted into an interactive data format by third-party sources, the availability of interactive data in Commission filings could allow investors to avoid additional costs associated with third-party sources.

The magnitude of this informational benefit varies, however, with the availability of sophisticated tools that will allow investors to analyze the information. The growing development of software products for users of interactive data is helping to make interactive data increasingly useful to both institutional and retail investors.[160] For example, currently there are many software providers and financial printers that are developing interactive data viewers. We anticipate that these will become widely available and increasingly accessible to investors. We expect that the open standard feature of the interactive data format will facilitate the development of applications, and software, and that some of these applications may be made available to the public for free or at a relatively low cost. The continued improvement in this software would allow increasingly useful ways to view and analyze mutual fund risk/return summary information to help investors make more well-informed investment decisions.

Interactive data also could provide a significant opportunity for mutual funds to automate their regulatory filings and business information processing, with the potential to increase the speed, accuracy, and usability of mutual fund disclosure. This reporting regime may in turn reduce filing and processing costs.

By enabling mutual funds to further automate their disclosure processes, interactive data may eventually help funds improve the speed at which they generate information. For example, with standardized interactive data tags, registration statements may require less time for information gathering and review.

A mutual fund that uses a standardized interactive data format at earlier stages of its reporting cycle may also increase the accuracy of its disclosure by reducing the need for repetitive data entry that could introduce errors and enhancing the ability of a mutual fund's in-house professionals to identify and correct errors in the fund's registration statements filed in traditional electronic format. There has been a growing development of software products to assist mutual funds to tag their risk/return summary information using interactive data helping make interactive data increasingly useful.[161]

Mutual funds that automate their regulatory filings and business information processing in a manner that facilitates their generation and analysis of disclosures could, as a result, realize a reduction in costs.

Market Efficiency

The proposed requirements could benefit investors by making financial markets more efficient in regard to the following:[162]

- Capital formation as a result of mutual funds' being in a better position to attract shareholders because of greater (less costly) awareness on the part of investors of mutual fund risk/return summary information; and
- Capital allocation as a result of investors' being better able to allocate capital among those mutual funds seeking it because of interactive data reporting's facilitating innovations in efficient communication of mutual fund risk/return summary information.

More Efficient Capital Formation

An increase in the efficiency of capital formation is a benefit that may accrue to the extent that interactive data reduces some of the information barriers that make it costly for mutual funds to find appropriate sources of new investors. In particular, smaller mutual fund complexes are expected to benefit from enhanced exposure to investors. If interactive data risk/return summary reporting increases the availability, or reduces the cost of collecting and analyzing, mutual fund risk/return summary data, then there could be improved coverage of mutual funds in smaller fund complexes by third party information providers and commercial data vendors.

At present, some mutual funds in smaller fund complexes do not provide their data to third party information providers.[163] This may reduce the

[159] *See* Part I.

[160] *See SEC's Office of Interactive Disclosure Urges Public Comment as Interactive Data Moves Closer to Reality for Investors,* Securities and Exchange Commission Press Release, Dec. 5, 2007, available at *http://www.sec.gov/news/press/2007/2007-253.htm.*

[161] *Id.*

[162] We believe the benefits will stem primarily from the requirement to submit interactive data to the Commission and the Commission's disseminating that data. We also believe, however, that the requirement that mutual funds with Web sites post the interactive data required to be submitted would encourage its widespread dissemination thereby contributing to lower access costs for users and the related benefits described. We solicit comment in Part II.E regarding what advantages dual Commission and Web site availability would have.

[163] Analysis by Division of Investment Management staff based on publicly available data.

likelihood that their data is readily available to investors who use commercially available products to assess mutual fund performance. Hence, if interactive data reporting increases coverage of mutual funds in smaller fund complexes by third party information providers, and this increases their exposure to investors, then lower search costs for shareholders could result.

More Efficient Capital Allocation

An increase in the efficiency of capital allocation may accrue to the extent that interactive data increase the quality of information by reducing the cost to access, collect, and analyze mutual fund risk/return summary information or improve the content of mutual fund-reported information.[164] An increase in quality and improvement in content could enable investors to better allocate their capital among mutual funds.

Information quality in mutual fund markets would likely be higher if interactive data reporting were required than if not, leading to more efficient capital allocation. As a result of the improved utility of information, investors may be able to evaluate various mutual funds, thereby facilitating capital flow into their favored investment prospects.

We believe that requiring mutual funds to provide interactive data would improve the quality of risk/return summary information available to end users, and help spur interactive data-related innovation in the supply of mutual fund comparative products, resulting from a potential increased competition among suppliers of such products due to lower entry barriers as a result of lower data collection costs.

However, we have considered competing views of the informational consequences of interactive data. For example, a requirement to submit interactive data information could decrease the marginal benefit of collecting information and thus reduce the information quality to the extent it reduces third-party incentives to facilitate access to, collect, or analyze information. Assuming that markets efficiently price the value of information, the amount of information accessed, collected (or enhanced), and analyzed will be determined by the marginal benefit of doing so.[165] Lowering information collection costs (through a requirement to submit interactive data information) should increase this benefit. If this is so, then there should be no degradation in the level of information quality as a result of changes in third-party provider behavior under an interactive data reporting regime. However, if one competitor in the industry can subsidize its operations through an alternative revenue stream, both quality and competition may suffer.[166]

Another potential information consequence of the proposed requirements may be changes to the precision and comparability of the information disseminated by data service providers since the interactive data requirements would shift the source of data formatting that allows aggregation and facilitates comparison and analysis from end-users to mutual funds submitting interactive data. At present, data service providers manually key risk/return summary information into a format that allows aggregation. As a result, the data service provider makes interpretive decisions on how to aggregate reported items so that they can be compared across all mutual funds. Consequently, when a subscriber of the commercial product offered by a data service provider uses this aggregated data, it can expect consistent interpretation of the reported items. In contrast, a requirement for mutual funds to submit interactive data information would require the mutual funds to independently decide within the confines of applicable requirements which ''tag'' best describes each item within the risk/return summary—perhaps with the help from a filing agent or consultant—lessening the amount of interpretation required by data aggregators or end-users of the data. Once a tag is chosen, comparison to other funds is straightforward. However, since mutual funds have some discretion in how to select tags, and can choose extensions (new tags) when they can not find an appropriate existing tag, unique interpretations by each fund could result in reporting differences from what current data service providers and other end-users would have chosen. This view suggests that the information disseminated by data aggregators may be, on the one hand, less comparable because they have not normalized it across mutual funds but, on the other hand, more accurate because the risk of human error in the manual keying and interpretation of filed information would be eliminated and more precise because it will reflect decisions by the mutual funds themselves. Replication of prior methods of interpretation still would be possible, however, because mutual funds would continue to be required to file risk/return summary information in traditional format. As a result, nothing would prohibit data aggregators from continuing to provide normalized data. Nonetheless, interactive data benefits could diminish if other reporting formats are required for clarification in data aggregation.

The content of mutual fund-reported information may improve because, as previously discussed, a mutual fund that uses a standardized interactive data format at earlier stages of its disclosure cycle may increase the accuracy of its disclosure. In contrast, the content of mutual fund-reported information may improve or decline to the extent that the interactive data process influences what mutual funds disclose. While the proposed requirements to submit and post interactive data information are intended to be disclosure neutral, it is possible they would affect what is disclosed.[167]

2. Costs of Interactive Data Submissions and Web Site Posting

The primary cost of the rulemaking is the cost of mutual funds' implementation of the rule, which includes the costs of submitting and posting interactive data. We discuss this cost element extensively below. In addition, because the proposed rules would allow an increase in the flow of risk/return summary information being reported directly to third party information providers and investors, there will be a cost of learning on the part of the investors in using and analyzing risk/return summary information at the interactive data level.

[164] In the context of the discussion below, quality refers to the ease with which end-users of risk/return summary information can access, collect, and analyze the data. This issue is separate from the content of mutual fund-reported information.

[165] Also, we expect that because the proposed rules would require the use of the XBRL interactive data standard, XBRL's being an open standard would facilitate the development of related software, some of which may, as a result, be made available to the public for free or at a relatively low cost and provide the public alternative ways to view and analyze interactive data information provided under our proposed rules.

[166] For illustration purposes only, assume that an Internet service company develops an interactive data-based tool that easily provides mutual fund risk/return summary information for free to all subscribers, and it uses this product as a loss leader to increase viewership and advertising revenue. If the data provided is of the same quality as data provided through subscription to other available commercial products, then there should be no informational efficiency loss. However, if a data aggregator's providing information that improves investor interpretation and goes beyond risk/return summary information is possible, but no longer profitable to produce for competitors without the subsidy, then valuable information production may be lost.

[167] We solicit comment on whether the proposed requirements would affect mutual fund disclosure in Part II.C.

As for the cost of implementation of the rule, based on currently available data, we estimate the average direct costs of submitting and posting interactive data-formatted risk/return summary information for all mutual funds under the proposed rules would, based on certain assumptions, be as follows:

TABLE.—ESTIMATED DIRECT COSTS OF SUBMITTING INTERACTIVE DATA-FORMATTED RISK/RETURN SUMMARY INFORMATION

	First submission	Subsequent submissions
Preparation [168]	$2,600	$2,300
Software and consulting services [169]	[170] 20,600	800
Web site posting [171]	250	250
Total cost	23,450	3,350

The above estimates are generated from a limited number of voluntary program participant questionnaire responses. In particular, these responses provided detail on the actual and projected costs of preparing risk/return summary information in interactive data format and for purchasing software or related filing agent services. A detailed analysis of the costs associated with voluntary program participation suggests that the estimated direct cost of submitting risk/return summary information in interactive data format falls within the range of $735.50 to $127,500 per fund for the first submission.[172] This cost reflects expenditures on interactive data-related software, consulting or filing agent services used, and the market rate for all internal labor hours spent (including training) to prepare, review, and submit the first interactive data format risk/return summary information. The future experiences of individual mutual funds regarding risk/return summary information filed in an interactive data format still may vary according to the mutual funds' size, complexity, and other factors not apparent from the voluntary program participant responses. The discussion below summarizes the *direct* cost estimates of compliance regarding risk/return summary submissions based on voluntary program participant questionnaire responses and the specified assumptions.[173]

- Average cost of first submission, excluding the costs of Web site posting, from voluntary program questionnaire data is $23,200.
- Projected average cost of subsequent submissions, excluding the costs of Web site posting, from voluntary program questionnaire data is $3,100.

This analysis attempts to quantify some of the direct costs that mutual funds will incur if we require submission and posting of interactive data. Whether mutual funds choose to purchase and learn how to use software packages designed for interactive data submissions or outsource this task to a third party, internal (labor) resources would be required to complete the task. The cost estimates provided here using voluntary program participant questionnaire responses shed light on the potential dollar magnitude of the costs of requiring interactive data submissions.

At present, there are 22 mutual funds that have participated in the voluntary program. Of these, 9 were provided questionnaires on the details of their cost experience, and 6 responses were collected by the time of this analysis representing the cost data for 10 funds.[174] The table below summarizes the aggregate costs per mutual fund, including software and filing agent service costs and an estimated cost for the internal labor hours required to prepare and submit the interactive data format information. The low and high estimates of the cost for internal labor hours were calculated using a variety of billing rates corresponding to the job descriptions of internal personnel involved in preparing the tagged risk/return summaries.[175] The reported costs are calculated using responses from the six voluntary program participants that provided responses. Although there are only 6 voluntary program respondents to the questionnaire, those 6 respondents represent mutual fund complexes whose assets comprise approximately 26.35% of all the assets of the mutual funds that ultimately

[168] Estimates based on risk/return summary voluntary program questionnaire responses. The voluntary program questionnaire responses indicated that different filers use different personnel to prepare interactive data submissions. We calculated costs for each participant based upon the personnel each individual respondent to the voluntary program questionnaire indicated it used and the length of time it indicated the personnel spent on the preparation. The numbers in the table represent the average of all of these calculations. The following wage rates were assumed for preparation cost estimates: operations specialist—$129; paralegal—$168; senior compliance examiner—$180; intermediate business analyst—$183; senior accountant—$185; programmer analyst—$194; financial reporting manager—$268; and attorney—$295. These estimated wage figures are based on published rates for the personnel above, modified to account for bonuses, firm size, employee benefits, and overhead, yielding the effectively hourly rates above. *See* SIA Report, *supra* note 132.

[169] Software licensing and the use of a consultant can be substitutionary—mutual funds can choose to do one or the other, or do both—and are thus aggregated.

[170] We note that one volunteer expended over $100,000 in information technology to develop internal software that applies interactive data tags to risk/return summary information. This one expenditure by one fund resulted in a higher average software and consulting services cost per fund of $20,600 for the first submission. Excluding this data, the average software and consulting services costs per fund would have been approximately $500.

While our averages imply that the costs of internally developing software are allocated to one fund in the sample, in reality the complex that developed the software will likely use that software for all of its funds. Thus the development cost could be allocated across all funds within that complex rather than to one fund.

[171] Voluntary program participants were not required to post on their Web sites, if any, the interactive data information they submitted. Consequently, the costs of the requirement to post interactive data information are not derived from the voluntary program participant questionnaire responses or discussed in our analysis of those responses. Those costs are, instead, derived from informal discussions with a limited number of persons believed to be generally knowledgeable about preparing, submitting, and posting interactive data.

[172] *See supra* note 170 with respect to the high end of the range.

[173] The details of this analysis regarding risk/return summary information, including the underlying assumptions and other considerations related to both the costs and benefits of requiring submission of interactive data, are provided following the summary.

[174] The questionnaires requested data for one fund; however, several questionnaire respondents voluntarily submitted cost information for more than one fund.

[175] *See supra* note 168. These estimates are from the Securities Industry and Financial Markets Association's Management & Professional Earnings in the Securities Industry 2007, modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Questionnaire respondents apportioned time spent tagging risk/return summaries among various job types.

would be required to submit interactive data.[176]

TABLE.—SUMMARY OF ILLUSTRATIVE SURVEY DATA ON THE DIRECT COST ESTIMATES FOR VOLUNTARY PROGRAM PARTICIPANTS

	All voluntary program participants respondents	
	Low	High
First submission: Estimated costs	$735.50	[177] $127,500
Subsequent submissions: Estimated costs	$555.00	$5,640
Average reduction in cost from first to second submission	24.54%	[178] 95.58%

Scalability of Interactive Data-Related Support Services and Technology

The final cost consideration in this section is the scalability of interactive data-related support services and technology. In particular, it is unclear how the market for interactive data support services and technology may change if the Commission required over 8,000 mutual funds to submit and post interactive data.

The roles of each potential kind of service provider within the interactive data market are likely to develop further and are not yet clear, and there are many potential participants to consider, including the software vendors, print/filing agents, and consultants, as well as the Commission.[179] Until the market of mutual funds that submit interactive data information grows substantially larger (either by requirement or by expansion of the number of volunteers), it is difficult to predict how standard solutions will evolve. For example, we do not know whether mutual funds will adopt solutions that create interactive data submissions using third party software, a so-called ''bolt-on'' approach, or will seek integrated solutions that enable funds to prepare interactive data submissions from their existing software. Moreover, filing agents may maintain their role as an intermediary by offering interactive data technology or other service providers may cause that role to change. Others with technical expertise may participate in the technology with unpredictable results.

Combining the uncertainty over the source of future interactive data services with increased demand for these services could result in a new equilibrium market price that is different from what is currently reported by voluntary program participants. This price could be higher if the demand for interactive data services increases (from 15 mutual fund complexes currently participating in the voluntary program to 683 mutual fund complexes[180] participating) at a faster rate than the supply for these same services. More broadly, if an interactive data requirement resulted in clients subscribing for interactive data services faster than the rate at which these services can be supplied, then a price increase is the natural discriminator in how to allocate limited resources.

The submission costs discussed in this section suggest that if interactive data is implemented too quickly it could result in higher than necessary submission costs if the supply of interactive data-related resources is constrained, but the effect would likely diminish as a market place for interactive data services develops. Hence, this concern is mitigated by delaying the requirement that mutual funds submit interactive data until December 31, 2009. This delay would allow interactive data service suppliers to keep pace with demand.

B. Changes to Voluntary Program

In order to facilitate further evaluation of data tagging, the proposed amendments would enable investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X to submit exhibits containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format.

1. Benefits

We believe that portfolio holdings information in interactive data format may allow more efficient and effective retrieval, research, and analysis of registrants' portfolio holdings through automated means. The proposed amendments to the voluntary program will assist us in assessing whether using interactive data tags enhances users' ability to analyze and compare portfolio holdings information included in filings with the Commission.

Currently, a number of companies use computers and data entry staff to mine portfolio holdings information provided by mutual funds and others in order to populate databases that are used to package information for sale to analysts, funds, investors, and others. Permitting funds and other entities to tag portfolio holdings information in Commission filings will aid this data-mining process in that it will identify points of data at the source, which could reduce the cost to populate databases and improve the accuracy of that data. Additionally, the changes to the voluntary program may benefit funds and the public by permitting experimentation with data tagging using the new portfolio holdings list of tags when it is created.

In the future, the availability of potentially more accurate information about mutual funds and other entities could also reduce the cost of research and analysis and create new opportunities for companies that compile, provide, and analyze data to produce more value added services. Enhanced access to information submitted in interactive data format also has the potential to allow retail investors (or financial advisers assisting such investors) to perform more personalized and sophisticated analyses and comparisons of mutual funds and

[176] Based on total mutual fund assets of $11.8 trillion. Lipper-Directors' Analytical Data, Reuters 2008.

[177] We note that these costs are higher due to one questionnaire respondent who spent significantly more than all other respondents to create its own interactive data software in-house. *See supra* note 170.

[178] *Id.*

[179] In addition, mutual fund complexes with a large number of funds may consider developing software in-house since that cost could be allocated across all of their funds.

[180] Investment Company Institute, *2008 Investment Company Fact Book*, at 14 (2008), available at: *http://www.icifactbook.org/pdf/2008_factbook.pdf* (683 fund sponsors).

other investment options, which could result in investors making better informed investment decisions, and therefore in a more efficient distribution of assets by investors among different funds. This may, in turn, also contribute to increased competition among mutual funds and other entities and result in a more efficient allocation of resources among competing investment products. Although it is not possible to quantify precisely the beneficial effects of more efficient allocation of investors' assets and increased competition, they may be significant, given the size of the mutual fund industry.

Other potential benefits resulting from the inclusion of portfolio holdings information as a stand-alone item in the voluntary program could include an increase in the accuracy of information and the potential for increased timeliness of data that investors use to make informed investment decisions. Another potential benefit is that portfolio holdings information submitted in interactive data format would allow automated, instantaneous extraction of every investment disclosed in the schedule of portfolio holdings. Finally, the investment analysis process could become more efficient and effective through the increased use of automation and reduced human intervention that would result from the use of interactive data.

2. Costs

The proposed amendments to the voluntary program would lead to some costs for filers choosing to submit portfolio holdings information in interactive data format.[181] For purposes of the PRA, we estimated that the increase in annual internal burden hours to the industry would be approximately 220 hours, which would amount to an increase in costs of approximately $47,000 and that the increase in annual external costs per filer would amount to approximately $600 per year for a total estimated increase to the industry of approximately $12,000 on an annual basis.[182]

We based these cost estimates upon, among other things, experience with mutual funds who have submitted risk/return summary information in interactive data format in the current voluntary program.[183] Due to the ongoing nature of the project to develop the list of tags for portfolio holdings, however, we have limited data to quantify the cost of implementing the use of interactive data tags applied to portfolio holdings information, and we seek comment and supporting data on our estimates with regard to the proposed amendments. In the future, there may be additional costs to current users of EDGAR data. For example, companies that currently provide tagging and dissemination of EDGAR data may experience decreased demand for their services. These entities have developed certain products and services based on data in EDGAR; many entities disseminate, repackage, analyze, and sell the information. Allowing filers to submit tagged portfolio holdings information, even voluntarily, may have an impact on entities providing EDGAR-based services and products. Because the Commission does not regulate all these entities, it is currently not feasible to accurately estimate the number or size of these potentially affected entities. The limited, voluntary nature of the program will help the Commission assess the effect, if any, on these entities. Additionally, the availability of interactive data on EDGAR may provide these companies with alternative business opportunities.

C. Comment Solicited

We solicit comment on all aspects of this cost-benefit analysis, including the identification of any additional costs or benefits of, or suggested alternatives to, the proposed rules. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

We request comment regarding the costs and benefits to investors, mutual funds, third-party information providers, software providers, filing agents, and others who may be affected by the proposed rules. We are particularly interested in information on the costs and benefits to smaller mutual fund complexes.

In particular, we request comment regarding:

- The differences between start-up costs and the costs of providing interactive data on a continuing basis after the initial preparation; and
- The cost of Web site posting.

VI. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act[184] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, section 2(b)[185] of the Securities Act, section 3(f)[186] of the Exchange Act, and section 2(c)[187] of the Investment Company Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

A. Submission of Risk/Return Summary Information Using Interactive Data

The proposals to require mutual funds to submit interactive data to the Commission and post it on their Web sites are intended to make risk/return summary information easier for investors to analyze while assisting in automating regulatory filings and business information processing. In particular, we believe that the proposed rules would enable investors and others to search and analyze the risk/return summary information dynamically; facilitate comparison of mutual fund cost, performance, and other information; and, possibly, provide a significant opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of risk/return summary disclosure. Further, as discussed in detail above, we believe that the proposals may lead to more efficient capital formation and allocation.[188]

We understand that private sector businesses such as those that access mutual fund information and aggregate, analyze, compare, or convert it into interactive format have business models and, as a result, competitive strategies that the proposed interactive data requirements might affect. Since interactive data technology is designed to remove an informational barrier, business models within the mutual fund services industry that are currently adapted to traditional format document reporting may change, with possible consequences for the revenue stream of current product offerings due to the competitive effects of such a change.

[181] For purposes of the PRA, we also estimated a reduction in burden hours for the voluntary program collection of information, due to removal of risk/return summary information from the voluntary program. *See supra* Part IV.A.2.

[182] *See supra* Part IV.A.2.

[183] *See supra* note 168.

[184] 15 U.S.C. 78w(a)(2).

[185] 15 U.S.C. 77b(b).

[186] 15 U.S.C. 78c(f).

[187] 15 U.S.C. 80a–2(c).

[188] See Part V.A.

The competitive effects may relate to changes in the accessibility of risk/return summary information to investors, the nature of the information that investors receive, and the potential from new entry or innovation in the markets through which mutual fund disclosures are transmitted from mutual funds to investors. For example, lower entry barriers that result from lower data collection costs may increase competition among third-party information providers and help spur interactive data-related innovation. It is also possible, however, that a requirement to submit interactive data information could decrease the marginal benefit of collecting information and thus cause third-party information providers to produce information that is less robust to the extent the decreased marginal benefit reduces third party incentives to facilitate access to, collect, or analyze information. If markets efficiently price the value of information, the amount of information accessed, collected (or enhanced), and analyzed will be determined by the marginal benefit of doing so.[189] Lowering information collection costs (through a requirement to submit interactive data information) should increase this benefit. If this is so, then there should be no degradation in the level of information quality as a result of changes in third-party provider behavior under an interactive data reporting regime. However, if one competitor in the industry can subsidize its operations through an alternative revenue stream, both quality and competition may suffer.

For the reasons described more fully above, we believe the liability protections for interactive data would be necessary or appropriate in the public interest and consistent with the protection of investors. Moreover, the protections would also be consistent with the purposes fairly intended by the policy and provisions of the Investment Company Act.

B. Changes to the Voluntary Program

The proposed amendments would no longer allow mutual funds to submit risk/return summary information in interactive data format through the voluntary program after the compliance date for the mandatory rules and would enable investment companies that are registered under the Investment Company Act, business development companies, and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X to submit exhibits containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format. The changes to the voluntary program are intended to help further evaluate the usefulness to investors, third-party information providers, investment companies, the Commission, and the marketplace of interactive data and, in particular, of submitting portfolio holdings information in interactive data format. Because compliance with the proposed amendments will be voluntary, the Commission estimates that the impact of the proposal will be limited. However, because the submission of portfolio holdings information in interactive data format has the potential to facilitate analysis of that information, we believe that the proposed amendments could promote efficiency by allowing us and others to gain experience with portfolio holdings information in interactive data format.

Further, submitting portfolio holdings information in interactive data format has the potential to help streamline the delivery of portfolio holdings information, and provide investors and others with improved tools to compare funds and other entities. As with the filing of risk/return summary information in interactive data format, we believe that the potential to streamline the delivery of portfolio holdings information and to provide investors and others with improved comparison tools could promote efficiency and competition through more efficient allocation of investments by investors and more efficient allocation of assets among competing funds and other investment products.

In the future, companies that currently provide tagging and dissemination of EDGAR data may experience decreased demand for their services. The availability of interactive data on the Commission's electronic filing system however, may provide these companies with alternative business opportunities. We do not anticipate that the proposed amendments would have a significant impact on capital formation. Finally, because the proposals are designed to permit mutual funds and other entities to provide information in a format that we believe would be more useful to investors, we believe that the proposed amendments are appropriate in the public interest and for the protection of investors.

C. Request for Comment

We request comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views, if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments that would require mutual funds to provide risk/return summary information to the Commission and on their Web sites in interactive data format and that would enable investment companies and other entities to submit exhibits through the voluntary program containing a tagged schedule of portfolio holdings without having to submit other financial information in interactive data format.

A. Reasons for, and Objectives of, the Proposed Action

Submission of Risk/Return Summary Information Using Interactive Data

The main purpose of the proposed amendments is to make risk/return summary information easier for investors to analyze while assisting in automating regulatory filings and business information processing. Currently, mutual funds are required to file their registration statements in a traditional format that provides static text-based information. We believe that providing the risk/return summary information these filings contain in interactive data format would:

- Enable investors and others to search and analyze the information dynamically;
- Facilitate comparison of mutual fund performance; and
- Possibly provide a significant opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of risk/return summary disclosure.

Changes to the Voluntary Program

The main purpose of the proposed amendments to the voluntary program is to help us evaluate the usefulness to investors, third party information providers, funds, the Commission, and the marketplace of interactive data and, in particular, of submitting portfolio holdings information in interactive data format. We believe the proposed

[189] Also, we expect that because the proposed rules would require the use of the XBRL interactive data standard, XBRL's being an open standard would facilitate the development of related software, some of which may, as a result, be made available to the public for free or at a relatively low cost and provide the public alternative ways to view and analyze interactive data information provided under our proposed rules.

changes to the voluntary program would enable us to further study the extent to which interactive data enhance the comparability of portfolio holdings information, the usefulness of interactive data for dissemination, and our staff's ability to review and assess the accuracy and adequacy of that data. The proposed changes to the voluntary program also would help us assess the effect of interactive data on the quality and transparency of portfolio holdings information, as well as the compatibility of interactive data with the Commission's disclosure requirements.

More specifically, we believe that the proposed changes to the voluntary program would better enable us to study the extent to which interactive data would:

- Enable investors and others to search and analyze the information dynamically;
- Facilitate comparison of portfolio holdings among funds and other entities; and
- Possibly provide a significant opportunity to reduce the resources needed for data analysis.

In addition, we believe the proposed changes to the voluntary program would enhance our ability to evaluate the:

- Impact on the staff's ability to review filings on a more timely and efficient basis,
- Use of interactive data for risk assessment and surveillance procedures, and
- Compatibility of interactive data with reporting quality, transparency, and other Commission reporting requirements.

B. Legal Basis

We are proposing the amendments under sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act,[190] sections 3, 12, 13, 14, 15(d), 23(a), 35A, and 36 of the Exchange Act,[191] sections 314 and 319 of the Trust Indenture Act [192] and sections 6(c), 8, 24, 30, and 38 of the Investment Company Act.[193]

C. Small Entities Subject to the Proposed Rules

The proposed amendments would affect mutual funds that are small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[194] Approximately 127 mutual funds registered on Form N–1A meet this definition.[195] All of these mutual funds would become subject to the proposed rules to require submission of risk/return summary information using interactive data. Regarding the proposed changes to the voluntary program, a smaller subset of small entity mutual funds may voluntarily submit tagged portfolio holdings information, but, because submitting portfolio holdings information would be voluntary, we anticipate that only mutual fund complexes with sufficient resources would elect to participate. To date, no small entity mutual funds have elected to participate in the current voluntary program.

D. Reporting, Recordkeeping and Other Compliance Requirements

Submission of Risk/Return Summary Information Using Interactive Data

All mutual funds subject to the proposed rules would be required to submit risk/return summary information to the Commission in interactive data format and, if they have a Web site, post the interactive data on their Web site. We believe that, in order to submit risk/return summary information in interactive data format, mutual funds in general and small entities in particular likely would need to prepare and then submit the interactive data by expending internal labor hours in connection with either or both of

- Purchasing, learning, and using software packages designed to prepare risk/return summary information in interactive format; and
- Hiring and working with a consultant or filing agent.

We believe that mutual funds would incur relatively little cost in connection with the requirement to post the interactive data on their Web site because the requirement applies only to mutual funds that already have a Web site.[196]

Changes to the Voluntary Program

The voluntary program is designed to assist us in assessing the feasibility of using interactive data on a broader basis. Experience with the current voluntary program indicates that the cost of submitting portfolio holdings information in interactive data format, the associated burden on the Commission's electronic filing system, and the possible effect of the proposed changes to the voluntary program on those entities that use the data from the Commission's electronic filing system would be minimal.

No registrant would be required to submit documents in interactive data format under the proposed changes to the voluntary program. The submission of portfolio holdings information in interactive data format would require a participant to tag the portfolio holdings information already provided in required disclosures and to submit exhibits to its filing. Volunteers may also need to purchase software or retain a consultant to assist in creating interactive data exhibits.[197]

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, or overlap, or conflict with, other federal rules.

F. Agency Action to Minimize the Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered several alternatives, including the following:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Further clarifying, consolidating, or simplifying the proposed requirements;
- Using performance rather than design standards; and
- Providing an exemption from the proposed requirements, or any part of them, for small entities.

Submission of Risk/Return Summary Information Using Interactive Data

We believe that, as to small entities, differing compliance, reporting or timetable requirements, a partial or complete exemption from the proposed requirements, or the use of performance rather than design standards would be inappropriate because these approaches would detract from the long-term completeness and uniformity of the interactive data format risk/return summary information database. Less long-term completeness and uniformity would reduce the extent to which the proposed requirements would enable

[190] 15 U.S.C. 77e, 77f, 77g, 77s(a), and 77z–3.

[191] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, and 78mm.

[192] 15 U.S.C. 77nnn and 77sss.

[193] 15 U.S.C. 80a–6(c), 80a–8, 80a–24, 80a–29, and 80a–37.

[194] 17 CFR 270.0–10.

[195] This estimate is based on analysis by the Division of Investment Management staff of publicly available data as of December 2007.

[196] The internal labor and external costs required to comply with the proposed rules are discussed more fully in Parts IV and V above.

[197] *Id.*

investors and others to search and analyze the information dynamically; facilitate comparison of mutual fund performance; and, possibly, provide a significant opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of risk/return summary information disclosure. We note, however, that all mutual funds, including small entities, would not be subject to the proposed requirements until after December 31, 2009.[198] We solicit comment, however, on whether differing compliance, reporting, or timetable requirements, a partial or complete exemption, or the use of performance rather than design standards would be consistent with our described main goal of making risk/return summary information easier for investors to analyze while assisting in automating regulatory filings and business information processing.

We are considering whether further clarifying, consolidating, or simplifying the proposed interactive data submission and posting requirements would be appropriate. Based in part on our experience with the voluntary program, we believe that the proposed requirements are sufficiently clear and straightforward (although, we seek comment on this).

Changes to the Voluntary Program

The purpose of the proposed amendments is to help us evaluate the usefulness to investors, third party information providers, mutual funds and other entities, the Commission, and the marketplace of interactive data and, in particular, of submitting portfolio holdings information in interactive data format. Submitting documents containing portfolio holdings information in interactive data format would be entirely voluntary.

We have considered different or simpler procedures for small entities, but for interactive data to provide benefits such as ready comparability there cannot be alternative procedures in place for different entities. Similarly, in order to achieve the benefits of interactive data, use of a single technology is necessary. If we determine to require the filing of portfolio holdings information in interactive data format in the future, we will look to the results of the voluntary program, including those of the proposed changes to the voluntary program, to find alternatives to minimize any burden on small entities. We solicit comment on how the proposals could be modified to minimize the effect on small entities.

G. Solicitation of Comment

We encourage comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities as discussed in this analysis; and
- How to quantify the impact of the proposed amendments.

We ask those submitting comments to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

IX. Statutory Authority

The Commission is proposing the amendments outlined above under sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3]; sections 3, 12, 13, 14, 15(d), 23(a), 35A, and 36 of the Exchange Act [15 U.S.C. 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, and 78mm]; sections 314 and 319 of the Trust Indenture Act [15 U.S.C. 77nnn and 77sss]; and sections 6(c), 8, 24, 30, and 38 of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–8, 80a–24, 80a–29, and 80a–37].

List of Subjects

17 CFR Parts 232 and 239

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 230, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set forth above, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.485 by adding paragraph (c)(3) to read as follows:

§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(c) * * *

(3) A registrant's ability to file a post-effective amendment, other than an amendment filed solely for purposes of submitting an Interactive Data File, under paragraph (b) of this section is automatically suspended if a registrant fails to submit and post on its Web site any Interactive Data File exhibit as required by General Instruction C.3.(g) of Form N–1A. A suspension under this paragraph (c)(3) shall become effective at such time as the registrant fails to submit or post an Interactive Data File as required by General Instruction C.3.(g) of Form N–1A. Any such suspension, so long as it is in effect, shall apply to any post-effective amendment that is filed after the suspension becomes effective, but shall not apply to any post-effective amendment that was filed before the suspension became effective. Any suspension shall apply only to the ability to file a post-effective amendment pursuant to paragraph (b) of

[198] In this regard, in Part II.B. of this release we note that the additional time is intended to permit mutual funds to plan for and implement the interactive data reporting process after having the opportunity to experiment with the voluntary program. We also there solicit comment on the appropriate timetable for smaller mutual fund complexes (which would include small entities) and note that the additional time also is intended to enable us to monitor the voluntary program and, if necessary, make appropriate adjustments to the timetable.

this section and shall not otherwise affect any post-effective amendment. Any suspension under this paragraph (c)(3) shall terminate as soon as a registrant has submitted and posted to its Web site the Interactive Data File as required by General Instruction C.3.(g) of Form N–1A.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

3. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

4. Further amend § 232.11 as published at 73 FR 32827, June 10, 2008 by revising the definitions of ''Interactive Data in Viewable Form'' and ''Related Official Filing'' to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Interactive Data in Viewable Form. The term *Interactive Data in Viewable Form* means the financial statements, financial statement schedules, financial statement footnotes, and, in the case of an open-end management investment company registered under the Investment Company Act of 1940, risk/return summary information that

(1) Are displayed when an Interactive Data File is converted from machine-readable computer code into human-readable text through software the Commission provides; and

(2) Are displayed through such conversion identically in all material respects to the corresponding financial statements, financial statement schedules, financial statement footnotes, and, in the case of an open-end management investment company registered under the Investment Company Act of 1940, risk/return summary information in the Related Official Filing.

* * * * *

Related Official Filing. The term *Related Official Filing* means the ASCII or HTML format part of the official filing with which an Interactive Data File appears as an exhibit or, in the case of a filing on Form N–1A, the ASCII or HTML format part of an official filing that contains the information to which an Interactive Data File corresponds.

* * * * *

5. Further amend § 232.202 as published at 73 FR 32828, June 10, 2008, by revising Note 4 to read as follows:

§ 232.202 Continuing hardship exemption.

* * * * *

Note 4 to § 232.202: Failure to submit or post, as applicable, the Interactive Data File as required by Rule 405 by the end of the continuing hardship exemption if granted for a limited period of time, will result in ineligibility to use Forms S–3, S–8, and F–3 (§§ 239.13, 239.16b and 239.33 of this chapter), constitute a failure to have filed all required reports for purposes of the current public information requirements of Rule 144(c)(1) (§ 230.144(c)(1) of this chapter), and, pursuant to Rule 485(c)(3), suspend the ability to file post-effective amendments under Rule 485(b) (§ 230.485 of this chapter).

6. Further amend § 232.401 as published at 73 FR 32828, June 10, 2008, by revising paragraph (a) to read as follows:

§ 232.401 XBRL-Related Document submissions.

(a) Only an electronic filer that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), a ''business development company'' as defined in section 2(a)(48) of that Act, or an entity that reports under the Exchange Act and prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) is permitted to participate in the voluntary XBRL (eXtensible Business Reporting Language) program. An electronic filer that participates in the voluntary XBRL program may submit XBRL-Related Documents (§ 232.11) in electronic format as an exhibit to: the filing to which the XBRL-Related Documents relate; an amendment to such filing, or, if the electronic filer is eligible to file a Form 8–K (§ 249.308 of this chapter) or a Form 6–K (§ 249.306 of this chapter), a Form 8–K or a Form 6–K, as applicable, that references the filing to which the XBRL-Related Documents relate if such Form 8–K or Form 6–K is submitted no earlier than the date of that filing. The XBRL-Related Documents must comply with the content and format requirements of this section, be submitted as an exhibit to a form that contains the disclosure required by this section and be submitted in accordance with the EDGAR Filer Manual and, as applicable, one of Item 601(b)(100) of Regulation S–K (§ 229.601(b)(100) of this chapter), Item 601(b)(100) of Regulation S–B (§ 228.601(b)(100) of this chapter), Form 20–F (§ 249.220f of this chapter), Form 6–K or § 270.8b–33 of this chapter.

* * * * *

7. Amend § 232.401 by revising paragraphs (b)(1)(iv), (d)(1)(i), (d)(2) introductory text, and (d)(2)(i) to read as follows:

§ 232.401 XBRL-Related Document submissions.

* * * * *

(b) * * *

(1) * * *

(iv) If the electronic filer is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), a ''business development company'' as defined in Section 2(a)(48) of that Act, or an entity that reports under the Exchange Act and prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*), *Schedule I—Investments in Securities of Unaffiliated Issuers* (§ 210.12–12 of this chapter).

* * * * *

(d) * * *

(1) * * *

(i) That the financial information contained in the XBRL-Related Documents is ''unaudited'' or ''unreviewed,'' as applicable;

* * * * *

(2) The disclosures required by paragraph (d)(1) of this section must appear within the XBRL-Related Documents as a tagged data element and, as applicable, in:

(i) The exhibit index of a Form 10–K (§ 249.310 of this chapter), 10–Q (§ 249.308a of this chapter), 10 (§ 249.210 of this chapter), 10–SB (§ 249.210b of this chapter), 10–KSB (§ 249.310b of this chapter), 10–QSB (§ 249.308b of this chapter) or 20–F;

* * * * *

8. Further amend § 232.405 as published beginning at 73 FR 32828, June 10, 2008 by:

a. Revising Preliminary Note 1;

b. Revising paragraph (a);

c. Redesignating paragraph (b) as paragraph (b)(1) and adding the phrase ''If the electronic filer is not an open-end management investment company registered under the Investment Company Act of 1940,'' to the beginning of the paragraph;

d. Redesignating paragraphs (b)(1) and (b)(2) as paragraphs (b)(1)(i) and (b)(1)(ii);

e. Redesignating Note to paragraph (b) as Note to paragraph (b)(1);

f. Adding paragraph (b)(2); and

g. Adding a sentence at the end of the Note to § 232.405.

The revisions and additions read as follows:

§ 232.405 Interactive Data File submissions and postings.

Preliminary Notes

1. Sections 405 and 406 of Regulation S–T (§§ 232.405 and 232.406) apply to electronic filers that submit or post Interactive Data Files. Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), Item 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), and General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter) specify when electronic filers are required or permitted to submit or post an Interactive Data File (§ 232.11), as further described below in the Note to Section 405.

* * * * *

(a) *Content, Format, Submission and Posting Requirements—General.* An Interactive Data File (§ 232.11) must:

(1) Comply with the content, format, submission and Web site posting requirements of this section;

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), Item 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), or General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), as applicable, as an exhibit to a form that contains the disclosure required by this section;

(3) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of Regulation S–K, Item 101 of the Instructions as to Exhibits of Form 20–F, or General Instruction C.3.(g) of Form N–1A; and

(4) Be posted on the electronic filer's corporate Web site, if any, in accordance with, as applicable, Item 601(b)(101) of Regulation S–K, Item 101 of the Instructions as to Exhibits of Form 20–F, or General Instruction C.3.(g) of Form N–1A.

(b)(1) *Content—Categories of Information Presented.* If the electronic filer is not an open-end management investment company registered under the Investment Company Act of 1940,

* * *

(i) * * *

(ii) * * *

(2) If the electronic filer is an open-end management investment company registered under the Investment Company Act of 1940, an Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from the risk/return summary information set forth in Items 2 and 3 of Form N–1A.

* * * * *

Note to § 232.405: * * * For an issuer that is an open-end management investment company registered under the Investment Company Act of 1940, General Instruction C.3.(g) of Form N–1A specifies the circumstances under which an Interactive Data File must be submitted as an exhibit and be posted to the company's Web site, if any.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

9. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

10. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

11. Revise § 270.8b–33 to read as follows:

§ 270.8b–33 XBRL-Related Documents.

A registrant that participates in the voluntary XBRL (eXtensible Business Reporting Language) program may submit, in electronic format as an exhibit to a filing on Form N–CSR (§§ 249.331 and 274.128 of this chapter) or Form N–Q (§§ 249.332 and 274.130 of this chapter) to which they relate, XBRL-Related Documents (§ 232.11 of this chapter). A registrant that submits XBRL-Related Documents as an exhibit to a form must name each XBRL-Related Document ''EX 100'' as specified in the EDGAR Filer Manual and submit the XBRL-Related Documents in such a manner that will permit the information for each series and, for any information that does not relate to all of the classes in a filing, each class of an investment company registrant and each contract of an insurance company separate account to be separately identified. A registrant may submit such exhibit with, or in an amendment to, the filing to which it relates.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

12. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

13. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by adding a paragraph (g) to General Instruction C.3.

The addition is to read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM N–1A

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. Preparation of the Registration Statement

* * * * *

3. Additional Matters:

* * * * *

(g) *Interactive Data File.* An Interactive Data File (§ 232.11 of this chapter) is required to be submitted to the Commission and posted on the Fund's Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) for any registration statement or post-effective amendment thereto on Form N–1A that includes or amends information provided in response to Items 2 and/or 3. The Interactive Data File must be submitted as an exhibit to Form N–1A and must be named ''EX–101'' as specified in the EDGAR Filer Manual and be submitted in such a manner that will permit the information for each series and, for any information that does not relate to all of the classes in a filing, each class of the Fund to be separately identified. The Interactive Data File must be submitted as an amendment to the registration statement to which the Interactive Data File relates. The amendment must be submitted after the registration statement or post-effective amendment that contains the related information becomes effective but not later than 15 business days after the effective date of that registration statement or post-effective amendment.

Dated: June 10, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–13356 Filed 6–20–08; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Monday,
June 23, 2008

Part III

Department of Education

34 CFR Parts 668, 673, 674, et al.

The Teacher Education Assistance for College and Higher Education (TEACH) Grant Program and Other Federal Student Aid Programs; Final Rule

DEPARTMENT OF EDUCATION/

34 CFR Parts 668, 673, 674, 675, 676, 682, 685, 686, and 690

RIN 1840–AC93

[Docket ID ED–2008–OPE–0001]

The Teacher Education Assistance for College and Higher Education (TEACH) Grant Program and Other Federal Student Aid Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends title 34 of the Code of Federal Regulations to establish regulations for the Teacher Education Assistance for College and Higher Education (TEACH) Grant program. The TEACH Grant program is a non-need-based grant program that provides up to $4,000 per year to students who are enrolled in an eligible program and who agree to teach in a high-need field, at a low-income elementary or secondary school for at least four years within eight years of completing the program for which the TEACH Grant was awarded. If the grant recipient fails to complete the required teaching service, the TEACH Grant is treated as a Federal Direct Unsubsidized Stafford Loan (Federal Direct Unsubsidized Loan). The Secretary also amends the regulations related to the Student Assistance General Provisions; the General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; the Federal Perkins Loan Program; the Federal Work-Study Program; the Federal Supplemental Educational Opportunity Grant Program; the Federal Family Education Loan (FFEL) Program; the William D. Ford Federal Direct Loan Program; and the Federal Pell Grant Program to implement the TEACH Grant program. These regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the College Cost Reduction and Access Act of 2007 (CCRAA).

DATES: *Effective Date:* These regulations are effective July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Michelle Belton, U.S. Department of Education, 1990 K Street, NW., room 8031, Washington, DC 20006–8502. Telephone: (202) 502–7821 or via the Internet at: *Michelle.Belton@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (*e.g.* , Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: On March 21, 2008, the Secretary published a notice of proposed rulemaking (NPRM) for the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program and Other Federal Student Aid Programs in the **Federal Register** (73 FR 15336).

In the preamble to the NPRM, the Secretary discussed on pages 15337 through 15352 the major regulations proposed in that document to implement the TEACH Grant program authorized under Title IV of the HEA, including the following:

- Amending § 668.164(g) to add the TEACH Grant program to the list of programs for which a student becomes ineligible when the student is no longer enrolled at the institution for the award year and to describe how TEACH Grant recipients may qualify for a late disbursement.
- Amending § 668.183 to specify that a TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan would not be included in calculating an institution's cohort default rate.
- Amending § 673.5 to include the amount of any TEACH Grant in the types of funds that may be used to replace a student's expected family contribution (EFC).
- Adding new § 686.2 to define the terms ''Academic year or its equivalent for elementary and secondary schools (Elementary or secondary academic year),'' ''Annual award,'' ''Scheduled award,'' ''Elementary school,'' ''High-need field,'' ''Highly-qualified,'' ''Numeric equivalent,'' ''Post-baccalaureate program,'' ''Retiree,'' ''School serving low-income students (low-income school),'' ''Secondary school,'' ''Service Agreement,'' ''TEACH Grant-eligible institution,'' ''TEACH Grant-eligible program,'' ''Teacher,'' and ''Teacher preparation program.''
- Adding new § 686.3 to establish the duration of student eligibility for a TEACH Grant based on the maximum amount of grant funds available to students under section 420M(d)(1) and (2) of the HEA.
- Adding new § 686.4 to give institutions the option to participate in the TEACH Grant program, to clarify that participation in the program is voluntary, and to describe the obligations of institutions if they cease to participate in the program.
- Adding new § 686.5 to specify how an institution would treat correspondence courses for purposes of the TEACH Grant program.
- Adding new § 686.6 to prohibit students from receiving TEACH Grant payments concurrently from more than one institution.
- Adding new § 686.10 to describe the procedures that a student must follow when applying for a TEACH Grant, and, in particular, to require that a student submit a Free Application for Federal Student Aid (FAFSA), complete and sign a service agreement and promise to repay, and provide any additional information requested by the Secretary.
- Adding new § 686.11 to establish student eligibility requirements for the TEACH Grant program.
- Adding new § 686.12 to describe the agreement students must sign prior to receiving each TEACH Grant award, and to explain the service obligation that students must carry out for the TEACH Grant award not to convert to a Federal Direct Unsubsidized Loan.
- Adding new § 686.20 to require a student to submit a valid Student Aid Report (SAR) or for the student's institution to receive an Institutional Student Information Record (ISIR) with an official EFC so that the institution can determine the appropriate amount of a student's TEACH Grant.
- Adding new § 686.21 to provide that while a Scheduled Award for the TEACH Grant program is $4,000, students may receive lesser annual award amounts depending on their enrollment status and to clarify that a student's TEACH Grant award, combined with other estimated financial assistance, cannot exceed the cost of the student's attendance as determined by the institution.
- *Adding new §§ 686.22 and 685.25 to:* (1) Describe how an institution calculates a TEACH Grant payment for a payment period for an eligible student depending on the academic calendar of the eligible program, the student's enrollment status, and the amount of the student's annual award; (2) establish the minimum payment for a payment period; (3) require institutions to define the term ''academic year'' for purposes of calculating payments for payment periods; and (4) allow institutions to use overlapping Scheduled Awards in a payment period.
- Adding new § 686.23 to address how an institution calculates a TEACH Grant payment for an eligible student's payment period when the student is enrolled in a payment period that overlaps two award years.
- Adding new § 686.24 to establish how an institution calculates a payment for an eligible student who transfers

from another postsecondary institution within the same award year.

- Adding new § 686.31 to delineate what an institution must do to determine whether a student is eligible to receive a TEACH Grant.
- Adding new § 686.32 to describe the initial, subsequent, and exit counseling that institutions must provide to each TEACH Grant recipient.
- Adding new § 686.33 to allow institutions to pay a student a TEACH Grant at such times and in such installments that best meet the student's needs.
- Adding new § 686.37 to describe the information pertaining to a student's TEACH Grant eligibility that an institution must submit to the Department and to establish submission deadlines for this information.
- Adding new § 686.40 to define how and when a TEACH Grant recipient must contact the Department to document fulfillment of his or her service obligation or, if the service obligation has not been met, the intent to fulfill the service obligation.
- Adding new § 686.41 to define the conditions under which a TEACH Grant recipient will be able to request a suspension of his or her service obligation for a specified amount of time.
- Adding new § 686.42 to require the discharge of a grant recipient's service obligation if the recipient dies or becomes totally and permanently disabled, and to clarify that the four-year service obligation still would apply to a recipient who is in a conditional discharge period.
- Adding new § 686.43 to describe the various conditions under which a TEACH Grant would be converted into a Federal Direct Unsubsidized Loan, with interest accruing from the date of each grant disbursement and which a TEACH Grant recipient would be required to pay.

Technical Corrections

We are making minor technical changes, including the following, to correct errors that we identified during our review of the proposed regulations.

Program Participation Agreement (§ 668.14(f))

We have revised § 668.14(f) to correct inaccurate cross-references. Specifically, § 668.14(f) has been amended to cross-reference paragraphs (g) and (h) of the section, rather than (h) and (i) of the section. We also have revised § 668.14(f)(3) to cross-reference paragraph (f), rather than paragraph (g), of the section.

Teacher Loan Forgiveness Program (§§ 682.215 and 685.217)

We have revised §§ 682.215(c)(7)(ii) and 685.217(c)(7)(ii) to correct inaccurate citations for the Family and Medical Leave Act of 1993 (FMLA). The correct citation for the FMLA is 29 U.S.C. 2601, *et seq.,* not 19 U.S.C. 2654.

Analysis of Comments and Changes

The regulations in this document were developed through negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on March 21, 2008, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by April 21, and in response to the Secretary's invitation, 132 parties submitted comments on the proposed regulations. An analysis of the comments and the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes.

General

Comment: The Department received several general comments about the TEACH Grant program. Four commenters suggested that the program is inappropriately named and argued that the Department should change the name of the program to reflect the fact that it is, in their opinion, a loan forgiveness program rather than a grant program. Two commenters argued that the funds dedicated for the TEACH Grant program would better serve students if they were reallocated to the current Teacher Loan Forgiveness Program or to the Perkins Loan Program.

The Department also received comments in support of the TEACH Grant program that did not address specific sections of the proposed regulations.

Discussion: The name, purpose, and structure of the program are established by the HEA and cannot be changed by the Department. The Department is not authorized to reallocate funds Congress designates for the TEACH Grant program to another program.

The Department is working to disseminate detailed information about the unique nature of the TEACH Grant program, including how TEACH Grants may, under certain circumstances, convert into Federal Unsubsidized Direct Loans, to institutions as well as to parents and students.

Changes: None.

Eligible Programs (§ 668.8)

Comment: One commenter requested clarification about the relationship between the definition of eligible program in § 668.8 and the definition of TEACH Grant-eligible program in 34 CFR 686.2(d). The commenter questioned whether it is appropriate to add, in § 668.8(h)(3), a cross-reference to the definition of TEACH Grant-eligible program in 34 CFR 686.2(d). In addition, the commenter asked if programs that contribute to a student's ability to teach in a high-need field should be included in the definition of eligible program under § 668.8(h)(3)(i).

Discussion: We agree that the connection between the definition of eligible program in § 668.8 and the definition of TEACH Grant-eligible program found in 34 CFR 686.2(d) needs clarification. For purposes of the TEACH Grant program, an educational program is an eligible program under § 668.8 only if it qualifies as a TEACH Grant-eligible program in accordance with 34 CFR 686.2(d). Rather than amend § 668.8 to restate the definitional requirements of a TEACH Grant-eligible program, we amended § 668.8 simply to cross-reference the definition in 34 CFR 686.2(d).

A program that contributes to a student's ability to teach in a high-need field would be a TEACH Grant-eligible program if it is designed to prepare an individual to teach as a highly qualified teacher in a high-need field and leads to a baccalaureate or master's degree, or is a post-baccalaureate program of study.

Changes: We amended § 668.8(h) to clarify that an educational program qualifies as an eligible program for purposes of the TEACH Grant program only if it is a TEACH Grant-eligible

program in accordance with 34 CFR 686.2(d).

Treatment of Title IV grant and loan funds when a student withdraws (§ 668.22)

Comment: One commenter questioned the placement of TEACH Grants in the listing of unearned grant funds returned in the event a student withdraws from an institution during a payment period. The commenter believed that TEACH Grants should be placed at the beginning of the order for returning grant funds and asked that that placement be reconsidered.

Discussion: As reflected in the NPRM, the Department believes that TEACH Grants should not be at the beginning of the order for returning grant funds. Under the regulations, TEACH Grants will be returned after Federal Pell Grants, Academic Competitiveness Grants, National SMART Grants, and FSEOG program assistance. This return order is prescribed by section 484B(b)(3)(B)(iii) of the HEA.

Changes: None.

Calculating and Applying Cohort Default Rates (§ 668.183)

Comment: Several commenters supported § 668.183, which provides that a TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan is not included in the calculation of an institution's cohort default rate.

Discussion: We appreciate the commenters' support.

Changes: None.

Overaward (§ 673.5)

Comment: One commenter supported the proposal that TEACH Grants be allowed to replace the EFC, believing that this approach fulfills the spirit of the legislation and will be helpful in making awards to students.

Discussion: We appreciate the commenter's support.

Changes: None.

Maximum Loan Amounts (§§ 682.204 and 685.203)

Comment: One commenter wrote to support the proposal to exclude a TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan from a borrower's aggregate or annual loan limits in the Federal Family Education Loan (FFEL) and Federal Direct Loan Programs.

Discussion: We appreciate the commenter's support.

Changes: None.

Definitions (§ 686.2(d))

Agreement To Serve

Comment: None.

Discussion: The Department is changing the name of the agreement described in section 420N(b) of the HEA from ''service agreement'' to ''agreement to serve'' to be more consistent with the statute.

Change: We have amended § 686.2(d) to change the name of the agreement under which a TEACH Grant recipient commits to meet the service obligation described in § 686.12 from ''service agreement'' to ''agreement to serve.''

High-Need Field

Comment: A large number of commenters suggested that library media specialist should be included in the list of high-need fields. They argued that all 50 States require that a school library media specialist have a State teaching certificate, that library media specialists are considered teachers and are responsible for developing curriculum and instructing students, and that there are significant shortages of library media specialists across the country. Several commenters contended that early childhood education should be considered a high-need field because of the shortage of baccalaureate-degree-holding early childhood education teachers and the requirement that Head Start teachers have a bachelor's degree in early childhood education by 2013.

Discussion: Under certain circumstances, library media specialist and early childhood education qualify as high-need fields and a grant recipient could fulfill the service obligation associated with receipt of a TEACH Grant by teaching in these fields. As specified in § 686.12(b), for each TEACH Grant-eligible program for which the student received TEACH Grant funds, the grant recipient must fulfill a service obligation by serving as a full-time teacher for a total of not less than four elementary or secondary academic years within eight calendar years after completing the program or otherwise ceasing to be enrolled in the program for which the recipient received the TEACH Grant in a low-income school, as a highly qualified teacher, and in a high-need field in the majority of classes taught during each elementary and secondary academic year.

The definition of high-need field in § 686.2(d) reflects section 420N(b) of the HEA which specifically designates several fields as high-need and provides for the inclusion of other fields that are documented as high-need by the Federal Government, a State government or a local educational agency (LEA), and approved by the Secretary. The regulations explain that the additional high-need fields are those listed in the Department's annual Teacher Shortage Area Nationwide Listing (Nationwide List), which is available on the Department of Education's *Web site* at *http://www.ed.gov/about/offices/list/ope/pol/tsa.pdf*. The Nationwide List is based on information submitted to the Department by the States, and inclusion of a field on the Nationwide List indicates approval by the Department of Education. Some States have identified early childhood education and library media specialist as shortage areas in the Nationwide List.

For purposes of the TEACH Grant program, a teacher is someone who provides direct classroom teaching or classroom-type teaching in a non-classroom setting in an elementary or secondary school. An elementary or secondary school is a nonprofit institutional day or residential school, including a public elementary or secondary charter school, that provides elementary or secondary education, as determined under State law. The individual must be teaching the majority of classes in the high-need field. In the case of service in early childhood education, to meet the criterion of being a highly qualified teacher the individual would need to be certified by the State in early childhood education. To meet the criterion of teaching in an elementary school, the service would need to take place in an elementary school and the State would need to consider early childhood education a component of the State's elementary school education system and have designated early childhood education as a high-need field.

To meet the criterion of ''highly qualified,'' a library media specialist would need to be certified by the State as a library media specialist. To meet the criterion of ''teacher,'' the library media specialist would need to be performing direct classroom teaching or classroom-type teaching in a non-classroom setting for a majority of time in an elementary or secondary school. In addition, the State would have to designate library media specialist as a high-need field. In all cases, the service would need to be performed in a low-income school.

Changes: None.

Comment: A couple of commenters inquired whether elementary education could be included as a high-need field. One commenter requested that we provide specific information about how elementary school teachers could demonstrate that they are teaching in a high-need field.

Discussion: As described in the discussion of library media specialist and early childhood education, elementary education could be a high-need field if it is designated as a high-need field by the State in which the recipient teaches.

There are other limited circumstances under which a grant recipient can satisfy the service obligation by serving as an elementary school teacher including: (1) Teaching the majority of his or her courses in a high-need field, such as math, science, or a foreign language; (2) teaching in a foreign language immersion program; (3) serving as a reading specialist, a special education teacher, or a bilingual education teacher, or teaching English language acquisition; or (4) teaching in a low-income school in a State that has designated elementary education as a high-need field.

Changes: None.

Comment: A couple of commenters asked for clarification of the terms ''bilingual education'' and ''English language acquisition.'' One commenter questioned whether bilingual education includes immersion classrooms.

Discussion: The National Clearinghouse for English Language Acquisition (NCELA) (*http://www.ncela.gwu.edu*), an online resource supported by the Department of Education's Office of English Language Acquisition, provides general definitions of these terms. Language acquisition is the process of acquiring a first or second language. Bilingual education is an educational program in which two languages are used to provide content matter instruction. In foreign language immersion programs the foreign language is the vehicle for content instruction and is not the subject of instruction. Therefore, bilingual education does not include foreign language immersion programs.

Changes: We have added definitions of the terms ''bilingual education'' and ''English language acquisition'' to § 686.2(d). These definitions are taken from the NCELA.

Comment: One commenter asked the Department to specify what major would lead to teaching English acquisition and English as a Second Language and who would make this determination.

Discussion: The Department does not have the authority or expertise to specify which academic degrees would prepare an individual to teach in these, or any other, fields since that is an academic decision that rests with the institution.

Changes: None.

Comment: One commenter sought clarification of whether a foreign language is a high-need field and suggested that a K–12 foreign language immersion program should be considered part of the high-need foreign language field listed in the statute and regulations.

Discussion: All foreign languages are high-need fields for purposes of the TEACH Grant program. We agree with the commenter that teaching in a foreign language immersion program would meet the requirement for teaching in a high-need field.

Changes: None.

Highly-Qualified

Comment: A couple of commenters requested that the Department provide the specific requirements that must be met to satisfy the criterion for being a highly-qualified teacher rather than merely referencing the relevant statutes.

Discussion: The requirements for being designated ''highly qualified'' are very complex and differ for the various states. The requirement that teachers be highly-qualified applies to all public elementary or secondary school teachers employed by a LEA who teach a core academic subject. Special education teachers who teach core academic subjects are included in this requirement. In general, ''highly qualified'' means that the teacher—

(1) Has obtained full State certification as a teacher or passed the State teacher licensing examination, holds a license to teach in the State, and has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis (special education teachers must be certified in special education);

(2) Holds a minimum of a bachelor's degree; and

(3) Has demonstrated subject-matter competency in each of the academic subjects in which the teacher teaches, in a manner determined by the State and in compliance with section 9101(23) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

The statutory definition of ''highly qualified'' includes additional elements that apply differently to veteran teachers and new teachers, and to elementary, middle, and secondary school teachers. The complete statutory definition of a ''highly qualified'' teacher is in section 9101(23) of the ESEA and in section 602(10) of the Individuals With Disabilities Education Act. The Department's regulations at 34 CFR 200.56 further define ''highly qualified teacher.'' Among other things, 34 CFR 200.56 clarifies when teachers who pursue State certification through an alternative-route program may be considered fully certified while they participate in that program. More guidance on the criterion for being a highly qualified teacher is available at *http://www.ed.gov/teachers/nclbguide/improve-quality.html*.

Changes: None.

Post-Baccalaureate Program

Comment: A few commenters raised concerns about the phrase at the end of paragraph (2) of the definition of post-baccalaureate program that they believe makes a post-baccalaureate program offered by an institution that also has an undergraduate teacher preparation program ineligible for the TEACH Grant program. They suggested that the post-baccalaureate program and an undergraduate teacher education program offered by the same institution should both be eligible programs for TEACH Grant purposes. One of these commenters noted that some institutions require their undergraduate education majors to complete a fifth year during which they take coursework necessary to earn a teaching credential.

Discussion: The definition of post-baccalaureate program in § 686.2(d) is from section 420L(2) of the HEA. That definition limits the TEACH Grant eligibility of post-baccalaureate programs to those offered by institutions that do not have an undergraduate teacher preparation program. In the case of an institution that offers both an undergraduate teacher preparation program and a post-baccalaureate program, the institution would be eligible, and it could designate its teacher preparation program as a TEACH Grant-eligible program. We understand that some institutions' teacher preparation programs require students to complete a post-baccalaureate program after earning a baccalaureate degree in teacher education. However, the statute does not permit these post-baccalaureate programs to be eligible for the TEACH Grant program.

Changes: None.

TEACH Grant-Eligible Institution

Comment: One commenter questioned the exclusion of institutions that fail to meet financial responsibility standards but that qualify to participate in all of the other Title IV, HEA programs under alternate standards from participation in the TEACH Grant program.

Discussion: We agree with the commenter that the same standards should apply for an institution to qualify to participate in the TEACH Grant program as for all the other Title

IV programs. Using the same standards will result in consistent treatment across all programs and reduce the administrative burden on both institutions and the Department.

Changes: We have amended the definition of TEACH Grant-eligible institution to allow institutions that do not meet financial responsibility standards established in 34 CFR part 668, subpart L to participate in the TEACH Grant program by qualifying under an alternative standard in 34 CFR 668.175.

Comment: One commenter thanked us for including in the definition of TEACH Grant-eligible institution institutions whose teacher preparation programs are approved by a State, include extensive pre-service clinical experience, and provide pedagogical coursework or the assistance in the provision of such coursework.

Discussion: We appreciate the commenter's support.

Changes: None.

Comment: One commenter asked that we clarify what constitutes ''high-quality'' teacher preparation programs and what ''extensive pre-service clinical experience'' entails.

Discussion: The definition of TEACH Grant-eligible institution in § 686.2(d) contains four components that constitute a ''high-quality'' teacher preparation program. The components are: (1) Approval by a cognizant authority (either accreditation by a specialized accrediting agency or State approval); (2) extensive pre-service clinical experience; (3) direct provision of pedagogical coursework or assistance in providing such coursework; and (4) provision of supervision and support services to teachers, or assistance in such provision. Institutions whose programs are accredited by one of the specialized accrediting agencies recognized by the Secretary for the accreditation of professional teacher education programs, which are listed on the Department's *Web site* at *http://www.ed.gov/admins/finaid/accred/accreditation_pg8.html#ed*, are considered to meet the requirements related to pre-service clinical experience and pedagogical coursework. While we did not specifically discuss a minimum length of time for pre-service clinical experience during negotiated rulemaking, a standard will be necessary from an operational standpoint so that we can determine whether or not an institution whose teacher preparation program is not accredited by a specialized accrediting agency meets this requirement. Accordingly, we reviewed the requirements of all the States and determined that a majority of States require at least 10 weeks of full-time pre-service clinical experience, while some require significantly less and a few require more. In addition, in testimony during a public hearing on the TEACH Grant program, the American Association of Colleges for Teacher Education recommended 10 weeks of full-time pre-service clinical experience as a minimum. Therefore, we have adopted 10 weeks of full-time pre-service clinical experience, or its equivalent, as the regulatory standard. We considered that a program might be designed so that students would complete their clinical experience on a part-time basis and will allow for the completion of the 10 weeks of full-time pre-service clinical experience on a part-time basis.

Changes: We have revised paragraph (1)(i)(B) of the definition of TEACH Grant-eligible program in § 686.2(d) to specify that a teacher preparation program that is approved by a State must provide a minimum of 10 weeks of full-time pre-service clinical experience, or its equivalent.

Comment: One commenter asked whether the reference to ''teachers'' in paragraph (1)(ii) of the definition of TEACH Grant-eligible institution refers to an employed teacher or a student teacher.

Discussion: The phrase ''provides supervision and support services to teachers, or assists in the provision of services to teachers'' refers to employed teachers, not to student teachers. Faculty and other professional personnel at institutions with teacher preparation programs are expected to share their knowledge with working teachers as part of their education role.

Changes: None.

Comment: One commenter wondered what is meant in paragraph (1)(ii)(B) by the term ''novice'' in the description of the types of supervision and support services an institution might provide to teachers. The same commenter asked for further explanation and examples of ways an institution might meet the supervision and support services requirement.

Discussion: In general, a novice is an individual who is new to a field or activity. In the case of teachers, a novice is normally considered to be one who is involved in the first, second, or third year of teaching.

The regulations include a few illustrative examples of the types of supervision and support services an institution might provide to teachers. We believe that an exclusive list would be too restrictive on institutions. We expect that institutions with teacher preparation programs will be able to identify other types of services they provide that satisfy the requirement based on the illustrative examples.

Changes: None.

Comment: One commenter asked for more discussion and examples of how a community college can become a TEACH Grant-eligible institution. In particular, the individual wondered whether the community college must have an articulation agreement with each four-year institution to which a student would transfer.

Discussion: In order to be a TEACH Grant-eligible institution, a community college must have an agreement with at least one four-year institution. The agreement need not be a formal articulation agreement. However, the agreement must demonstrate (1) that the two-year program offered by the community college is acceptable for full credit in that institution's baccalaureate teacher education program, or (2) that the two-year program is acceptable for full credit in a baccalaureate degree program in a high-need field at a TEACH Grant-eligible institution. An agreement that would demonstrate that the two-year program is acceptable for full credit into a baccalaureate degree in the high-need field of math, for example, would likely list several courses that would meet the four-year institution's general education requirements, some courses that could be electives, and a few lower-level math courses required for the major. Our expectation is that a student who follows a pathway established through an agreement would not have to take additional credits beyond the minimum required for graduation from the four-year institution.

The agreement is used to establish institutional eligibility. It is not a requirement that each student enrolled in the two-year program attend the four-year institution with which the community college has the agreement. A community college does not have to have more than one agreement to establish its eligibility.

Changes: None.

TEACH Grant-Eligible Program

Comment: A couple of commenters expressed their appreciation that the regulations permit institutions to define which programs will be eligible for the TEACH Grant.

Discussion: We appreciate the support.

Changes: None.

Comment: One commenter asked that we explain the criterion of ''fully-qualified'' teacher in the context of preparation in an eligible program.

Discussion: We agree with the commenter that the definition of TEACH Grant-eligible program should make it clear that the program should be designed to prepare an individual to teach as a highly-qualified teacher. Preparation of highly-qualified teachers is a key component of an eligible program, but we also recognize that, given the various pathways a student might follow to gain the knowledge needed to become a highly-qualified teacher, the student may need to complete more than one program. For example, a student may earn a baccalaureate degree in a high-need field, such as mathematics, and then enroll in a post-baccalaureate program for the courses needed to receive a professional certification or licensing credential. Subject area content knowledge and certification are both components of the definition of ''highly-qualified'' teacher and, in the situation just described, a single program would not provide both. With this clarification, we agree that the definition of TEACH Grant-eligible program should include a reference to the preparation of a highly-qualified teacher.

Changes: We have amended the definition of a TEACH Grant-eligible program in § 686.2(d) to clarify that a TEACH Grant-eligible program must be designed to prepare an individual to teach as a highly-qualified teacher.

Comment: Several commenters sought guidance on the amount of latitude institutions have in designating eligible programs. Some wondered if an institution could designate only its master's degree programs, and not its undergraduate programs, or only its teacher preparation programs or post-baccalaureate programs as TEACH Grant-eligible.

Discussion: In making a determination of which programs to designate as TEACH Grant-eligible, an institution may differentiate between its master's degree programs and its undergraduate programs, making only its master's degree programs TEACH Grant-eligible. An institution may also choose to make only its teacher preparation programs TEACH Grant-eligible, and not include any programs in high-need fields.

Changes: None.

Comment: Several commenters asked whether institutions could limit participation in the TEACH Grant program to upper level undergraduate students. One commenter suggested that institutions should have the option to determine whether the first two years of a four-year program are part of an eligible program.

Discussion: An institution may limit participation in the TEACH Grant program to students who have formally declared a major or who have been formally admitted to the teacher preparation program. In such cases, the TEACH Grant-eligible program could effectively involve only upper-level undergraduate students and the eligible program would not include the first two years of a four-year program. An institution could also determine that the first two years are not part of the TEACH Grant-eligible program. However, if the institution designates a program as TEACH Grant-eligible it cannot further discriminate among eligible students in that program. If, for example, an institution designates a program as TEACH Grant-eligible and that program begins in the freshman year, the institution may not limit TEACH Grant participation to upper-level undergraduates in the program.

Changes: None.

Comment: One commenter asked whether a two-year institution could restrict TEACH Grant-eligibility to programs with some relationship to teacher preparation and not include programs that transfer into four-year baccalaureate programs that include high-need majors.

Discussion: An institution may designate only certain programs as TEACH Grant-eligible and not designate others, even though they may prepare a student to teach in a high-need field.

Changes: None.

Comment: In questioning whether an institution could require that a student must have declared an appropriate major, or have been accepted into a teacher preparation program, one commenter asked whether the practice would cross the line between program eligibility and student eligibility.

Discussion: Program eligibility—where the institution may identify, within the parameters of the regulations, the scope of institutional programs that are TEACH Grant-eligible—and student eligibility—where the institution must adhere to the eligibility criteria identified in the regulations—are closely intertwined in the TEACH Grant program and there are instances, such as the situation the commenter describes, where the line between them is crossed. It is important to note that a program might be defined differently for general Title IV purposes and for TEACH Grant purposes with the consequence that, for some period of time, a student could receive financial assistance from other Title IV programs, but would not qualify for a TEACH Grant. Ultimately, it is up to the institution to decide, based on regulatory requirements, what programs are TEACH Grant-eligible and when a student is considered to be accepted into a TEACH Grant-eligible program.

Changes: None.

Comment: One commenter asked whether an institution can determine that only some of the programs for which it currently awards other Title IV aid are also eligible for TEACH Grant purposes, even if some programs it does not wish to make TEACH Grant-eligible meet the regulatory definition.

Discussion: The institution has that discretion.

Changes: None.

Comment: Based on a concern that students will apply for and accept the TEACH Grant as a way of obtaining more loan funds with no intention of fulfilling the Agreement to Serve (ATS), one commenter asked the Secretary to provide more guidance, similar to the list of acceptable Classification of Instructional Programs (CIP) codes in the National SMART Grant program, for students to determine which programs are TEACH Grant-eligible.

Discussion: We recognize that institutions may not be able to control the type of behavior the commenter describes in all instances. Although an institution may limit the programs it designates as TEACH Grant-eligible, an institution can never know with certainty whether a student truly intends to fulfill his or her service obligation. Since designation of TEACH Grant-eligible programs is an institutional decision, we do not plan to provide more specific guidance or a list of CIP codes.

Changes: None.

Comment: One commenter asked if, prior to awarding a TEACH Grant, an institution could require that a student submit a plan to the institution describing the student's career goal and intended academic plan to that goal.

Discussion: An institution may require a student to submit a plan such as the commenter describes. This may be particularly helpful in situations where the student is enrolled in a program that will not, by itself, enable the student to begin teaching as a highly-qualified teacher in a high-need field. However, the plan by itself would not establish a student's eligibility for a TEACH Grant. A student must be enrolled in a TEACH Grant-eligible program to receive a TEACH Grant.

Changes: None.

Comment: A few commenters wondered whether a program that prepares a student to teach in a high-need field would have to be in the high-need field in which an individual plans to teach in meeting the service obligation, or if it could contribute significantly to the TEACH Grant

recipient's knowledge and instructional capacity in a high-need field. One commenter asked whether a master's degree program that is not a teacher preparation program would need to result in a degree in a high-need field to be considered eligible.

Discussion: An institution has the authority to determine which of its programs meet the requirements to be TEACH Grant-eligible and may designate any program that contributes in any way to a student's preparation to teach in a high-need field as a TEACH Grant-eligible program. This approach would allow, for example, an institution to designate its Masters in Business Administration (MBA) Program as a TEACH Grant-eligible program that will prepare a student to teach in the high-need field of mathematics, if it determines that the content of its MBA program would be good preparation for teaching mathematics.

Changes: None.

Comment: One commenter asked whether an institution could consider as TEACH Grant-eligible a two-year program that appears unrelated to a high-need field but that will transfer fully into a four-year TEACH Grant-eligible program.

Discussion: We believe that the institution would have a basis on which to define such a program as TEACH Grant-eligible.

Changes: None.

Comment: One commenter inquired whether a two-year school could offer a TEACH Grant-eligible post-baccalaureate program.

Discussion: These regulations do not restrict the authority of an institution of higher education to offer a post-baccalaureate program. If a community college offers such a program, the community college may use this as the means of establishing its institutional eligibility for the TEACH Grant program and would not, therefore, need to enter into an agreement with a four-year institution to establish eligibility.

Changes: None.

Comment: One commenter asked whether a student who returns to the institution only for teacher certification courses would be eligible for a grant.

Discussion: A student must be enrolled in a TEACH Grant-eligible program, which could be either a post-baccalaureate program of study or a master's degree program assuming the student already has a baccalaureate degree. If the student is merely taking courses he or she needs for certification, but is not enrolled in a TEACH Grant-eligible program, then the student would not be eligible for a TEACH Grant.

Changes: None.

Comment: One commenter asked whether a current teacher who decides to pursue a master's degree in a field that would not result in that teacher adding a certified area to his or her teaching credential would be considered to be enrolled in a TEACH Grant-eligible program and, if so, if the service performed on the basis of the individual's undergraduate degree could be used to fulfill the teaching obligation associated with the TEACH Grant for the master's degree.

Discussion: An institution designates which of its programs are TEACH Grant-eligible. As long as the student is enrolled in a TEACH Grant-eligible program that student could receive a TEACH Grant. Prior experience in the field will not strip a student of his or her eligibility. However, the teaching service performed prior to enrollment in the master's degree program cannot be used to meet the service obligation associated with the TEACH Grant. Full-Time teaching service while attending school to obtain a master's degree would count toward the service obligation for any TEACH Grants that were received for an undergraduate or post-baccalaureate program. The teaching service performed while the student is enrolled may not be counted against the service obligation for the program in which the student is enrolled because the statute specifies that the student must teach ''after completing the course of study for which the applicant received a TEACH Grant.''

Changes: None.

Comment: One commenter asked whether a four-year baccalaureate program that does not include an education component could be considered TEACH Grant-eligible if a student is able to transfer out of it after two years, prior to declaring a major, into a teacher preparation program at the same institution or at another institution with which the student's first institution has an agreement.

Discussion: The comment addresses institutional eligibility and program eligibility. In regard to institutional eligibility, an institution that has a teacher preparation program would not need to enter into an agreement with another institution to be a TEACH Grant-eligible institution. The institution could establish eligibility on the basis of its teacher preparation program, assuming that program meets the requirements contained in paragraph (1) of the definition of TEACH Grant-eligible institution in § 686.2(d).

In regard to program eligibility, it is not a requirement that a program include a teacher education component to be designated a TEACH Grant-eligible program. An institution may designate a program as TEACH Grant-eligible if it prepares an individual to teach as a highly-qualified teacher in a high-need field.

In this example, if the institution has designated both its program that does not include a teacher education component and its teacher preparation program as TEACH Grant-eligible, and the student is admitted to its teacher preparation program in the third year of undergraduate study, then the student would be eligible for a TEACH Grant for a total of four years. Since both of the programs in this example are TEACH Grant-eligible, the student could receive a TEACH Grant for each year of enrollment in the baccalaureate program without the education component and for each year of enrollment in the program with the teacher education component.

Changes: None.

Teacher and Full-Time Teacher

Comment: One commenter asked what a substitute teacher would need to do to meet the requirement of teaching full-time and other aspects of the service obligation.

Discussion: A substitute teacher would need to satisfy the same requirements as a regular teacher as described in § 686.12(b)(1), (2), and (3). The substitute teaching service must be in a low-income school and the substitute must teach a majority of courses in a high-need field, as a highly-qualified teacher, for it to count toward meeting the service obligation. The substitute teacher must teach enough to meet the standard used by the State in defining full-time employment as a teacher. He or she could satisfy the requirement of teaching full-time by teaching in more than one low-income school and demonstrating that the combined teaching service was the equivalent of full-time. The substitute teacher would need to provide documentation as provided in § 686.40.

Changes: None.

Comment: One commenter noted that special education teachers and reading specialists often serve other teachers as a resource or as a literacy coach and inquired whether such individuals would be considered teachers for purposes of fulfilling the service obligation.

Discussion: The definition of ''teacher'' specifically includes special education teachers and reading specialists. Service performed by special education teachers and reading specialists, such as serving as a literacy

coach or resource to another teacher, either in the classroom or in a classroom-like setting, meets the definition of teacher. In order to meet the requirements of the service obligation, special education teachers and reading specialists must spend the majority of time teaching in a classroom or classroom-like setting, though they may also serve as a resource for other teachers.

Changes: None.

Duration of Student Eligibility (§ 686.3)

Comment: One commenter asked whether a student who already has earned a baccalaureate degree in a non-TEACH Grant-eligible program could be considered eligible for a TEACH Grant if the student enrolled in a TEACH Grant-eligible baccalaureate degree program, since this would be that student's first such baccalaureate degree. The commenter asked the same question about post-baccalaureate programs.

Discussion: Section 420M(d)(1) of the HEA provides that a student may receive grants for the period required for the completion of the first undergraduate or post-baccalaureate course of study. In reviewing proposed § 686.3, we have determined that § 686.3 could suggest that a student who already has a baccalaureate degree in a non-TEACH Grant-eligible program would be eligible for a TEACH Grant if the student enrolled in a TEACH Grant-eligible baccalaureate degree program. However, that is not what we intended so we have clarified the regulations. An undergraduate student can get a TEACH Grant only for their first baccalaureate degree.

Post-baccalaureate programs are by definition TEACH Grant-eligible. A student can get a TEACH Grant for completion of only one post-baccalaureate program.

Changes: We amended § 686.3(a) to clarify that a student who already has completed a baccalaureate or post-baccalaureate program of study and has enrolled in a TEACH Grant-eligible baccalaureate or post-baccalaureate program of study will not be able to receive a TEACH Grant.

Comment: A commenter asked whether a student who has completed the requirements for teacher certification but elects to remain enrolled in the institution would continue to be eligible to receive TEACH Grants.

Discussion: If a student has completed the requirements for teacher certification but remains enrolled in the institution, the student's eligibility for further TEACH Grants would depend on whether the student is still considered enrolled in his or her TEACH Grant-eligible program. If the student completed the requirements for the TEACH Grant-eligible program's degree or certificate, the student would no longer be eligible.

Changes: None.

Institutional Participation (§ 686.4)

Comment: One commenter expressed appreciation that participation in the TEACH Grant program is optional for institutions.

Discussion: We appreciate the support.

Changes: None.

Comment: One commenter suggested that the regulations should provide that if an institution ceases to participate in the TEACH Grant program, the TEACH Grant recipients at that institution would not be required to repay any TEACH Grant funds they received because it is the institution, not the student, that has withdrawn from the program.

Discussion: Whether or not the institution continues to participate in the TEACH Grant program, a grant recipient is responsible for fulfilling the terms of the ATS that he or she signed. The student would still be able to continue a program of study to become a teacher, even if the institution no longer participated in the TEACH Grant Program, though the student would not receive additional TEACH Grants for that program. In addition, the student would also have the option to transfer to another institution to get a teaching credential. If the recipient fails to meet the requirements of the ATS, the TEACH Grants will convert to a Federal Direct Unsubsidized Loan.

Changes: None.

Application (§ 686.10)

Comment: One commenter supported the Department's use of the FAFSA as the application for a TEACH Grant.

Discussion: We appreciate the commenter's support.

Changes: None.

Eligibility To Receive a Grant (§ 686.11)

Comment: Several comments were received on how admissions tests are treated as part of student eligibility for a TEACH Grant. One commenter asked whether an institution must first determine whether a student achieved a score above the 75th percentile on at least one of the batteries of a standardized admission test before determining TEACH Grant eligibility based on the student's grade point average (GPA). One commenter requested restricting admission test scores by educational level, while another commenter supported the approach in the proposed regulations regarding how admission test scores are considered as part of student eligibility. Another commenter wanted to know how to determine a home-schooled student's eligibility if the institution does not require an admissions test. Another commenter asked whether a test used for admission is acceptable for the 75th percentile determination even if it is also used as a placement test. Clarification on which nationally-normed tests qualify a student for a TEACH Grant and how a test is determined to be nationally-normed was also requested by a commenter. Finally, one commenter asked whether, in lieu of test score submissions by the testing entity, a student may submit documentation of test scores directly to the financial aid office.

Discussion: Section 420N(a)(2)(A)(ii)(II) of the HEA requires an institution to determine whether the student displayed high academic aptitude by scoring above the 75th percentile of scores on at least one of the batteries from a nationally-normed standardized admissions test and does not restrict the use of admission test scores by undergraduate or graduate educational level. Because the test scores are intended to be a measure of high academic aptitude without being associated with a particular educational level, the Department does not believe that restricting qualification for a TEACH Grant by test score by educational level is appropriate. If the student did not achieve a qualifying test score, an otherwise eligible student may qualify based on the applicable GPA requirements.

The student's qualifying test score does not need to be used by the institution as an admissions test at that school. In addition, a student may qualify based on a score on an admissions test that doubles as a placement test at the institution. While a home-schooled student may qualify by scoring above the 75th percentile on a standardized admissions test, he or she may also qualify based on his or her high school GPA as documented by the student's parent or other cognizant authority. Any student who does not qualify by test score or GPA is not eligible for a TEACH Grant.

All nationally-normed tests are not eligible to qualify a student—only nationally-normed admission tests qualify. An admissions test is considered to be nationally-normed if the norming sample is nationally-representative, that is, individual student test performance can be

compared to a nationally-drawn peer sample. For documentation purposes, a student may submit qualifying test scores directly to the financial aid office in lieu of having the testing entity send the test scores to the institution. However, if the institution has reason to believe that the test scores submitted directly by the student are incomplete or inaccurate, the institution must request test scores from the testing entity.

Changes: None.

Comment: Three commenters expressed concern about the GPA requirement to receive a TEACH Grant. One believed that the required 3.25 GPA is too high. Another commenter suggested that students who qualified for a TEACH Grant by meeting the admission test option should still have to meet the 3.25 cumulative GPA, or numeric equivalent, through the most recently completed payment period that is required of students who did not qualify under the admission test option. Another commenter recommended that GPA be checked once per year, not once each term.

Discussion: Under section 420N(a)(2)(A)(ii)(I) of the HEA, achieving a 3.25 GPA on a 4.0 scale allows an otherwise eligible student who did not qualify via an undergraduate, postbaccalaureate, or graduate school admissions test score to qualify for a TEACH Grant. The statute does not require students who qualified using the admission test score option to maintain a 3.25 GPA in the eligible program, but does require that a student who qualified using the 3.25 cumulative GPA option to continue to maintain a GPA of at least 3.25 on a 4.0 scale. To document that such a student continues to meet the 3.25 GPA eligibility requirement, § 686.11(a)(1)(v) stipulates that the institution must check the student's GPA for the most recently completed payment period by the institution prior to disbursement.

Changes: None.

Comment: One commenter was concerned that the academic requirements to receive a TEACH Grant—qualifying test scores or GPA—would impose an additional burden on financial aid officers.

Discussion: Section 420N(a)(2)(A)(ii)(I) and (II) of the HEA established the qualifying admission test scores and GPA requirements for receiving a TEACH Grant that were reflected in the proposed regulations. Institutions are required to implement these requirements. The regulations do not specifically stipulate, however, that financial aid officers make the academic determinations. Rather, institutions should follow their own institutional policies and procedures to ensure that these student eligibility requirements are properly administered.

Changes: None.

Comment: One commenter requested clarification on the methods by which a former teacher may qualify for a TEACH Grant.

Discussion: Under § 686.11(b), a former teacher is eligible for a TEACH Grant for a master's degree program or an alternative certification program as part of a master's degree program. In addition, a former teacher can qualify under § 686.11(a) for an eligible undergraduate, post-baccalaureate, or graduate degree program if he or she meets the academic requirements.

Changes: None.

Agreement To Serve (§ 686.12)

Comment: Many commenters were concerned that the basic elements of the ATS would be difficult for most TEACH Grant recipients to satisfy, thereby increasing the probability that the majority of TEACH Grants would convert to Federal Direct Unsubsidized Loans. The commenters stated that it was not appropriate to expect students, especially lower classmen who either have not or cannot declare a major, to make a four-year commitment to serve in a low-income school as a highly-qualified full-time teacher in a high-need field at such a young age. The commenters cited the frequency with which students change majors or career goals upon exposure to coursework or, even later, after exposure to teaching experience. One commenter suggested that the Department include, in the ATS, the fact that the Congressional Budget Office has projected that 80 percent of TEACH Grants will convert to Federal Direct Unsubsidized Loans.

Discussion: The teaching service requirements contained in the ATS and described in § 686.12(b) are mandated by section 420N(b) and (c) of the HEA. In order to receive a TEACH Grant, the HEA requires that each TEACH Grant recipient agree to serve as a full-time teacher for a total of not less than four academic years within eight years of completing the course of study for which a TEACH Grant was received in a low-income school as a highly-qualified teacher in a high-need field. The HEA further requires that a grant recipient document each year of his or her teaching service in the form of a certification by the chief administrative officer of the school in which the recipient is teaching. Lastly, the HEA provides that if the recipient fails or refuses to carry out the service obligation, any TEACH Grants received are treated as a Federal Direct Unsubsidized Loan with interest accruing from the date that each TEACH Grant was disbursed. While we understand the commenters' concerns, the Secretary does not have the authority to change statutory requirements. We note, however, that the ATS that a TEACH Grant recipient must sign each year before receiving a TEACH Grant contains all of the terms and conditions a recipient must meet in order to prevent the grant from converting to a Federal Direct Unsubsidized Loan. Finally, the Secretary does not see the merit of including Congressional Budget Office projections in the ATS.

Changes: None.

Comment: Many commenters expressed concern that the regulations in § 686.12(b)(1) do not provide for partial fulfillment of a TEACH Grant recipient's ATS based on completion of less than four years of creditable teaching service. The commenters believed that requiring a teacher who fails to meet any part of the teaching service obligation to repay the entire amount of the grant award as a Federal Direct Unsubsidized Loan was unfair and punitive. The commenters strongly recommended that we allow TEACH Grant recipients to partially fulfill their ATS based on the number of years taught. For example, if a grant recipient received $16,000 in TEACH Grants and completed two years of creditable teaching service in accordance with his or her ATS, the grant recipient would owe $8,000 in TEACH Grants that would convert to Federal Direct Unsubsidized Loans.

Other commenters did not believe that a student who receives TEACH Grants for only one award year while completing coursework necessary to begin a career in teaching should be required to perform four years of creditable teaching service in order to keep the TEACH Grants from converting to Federal Direct Unsubsidized Loans. The commenters believed that the teaching service obligation should be directly proportional to the number of years of TEACH Grant support received by a student. For example, if a student receives TEACH Grants for two award years, the teaching service obligation associated with the receipt of grant funds would also be two years.

Discussion: Section 420N(b)(1) of the HEA states that a TEACH Grant recipient must serve as a full-time teacher for a total of not less than four academic years within eight years after completing the course of study for which the applicant received a TEACH Grant. The Secretary does not have the

authority to change statutory requirements to allow for partial fulfillment of an ATS based on a teaching service obligation that is directly proportional to the number of years of TEACH Grant support received by a student.

Changes: None.

Comment: One commenter stated that requiring a TEACH Grant recipient to perform creditable teaching service in a low-income elementary or secondary school is a disservice to such schools because inexperienced teachers trying to satisfy their ATS would be teaching in an environment where more experienced teachers are needed.

One commenter recommended that the final regulations provide relief to a TEACH Grant recipient who is unable to fulfill his or her ATS because there are no low-income elementary or secondary schools within a reasonable distance of the grant recipient's residence or because the grant recipient has not been hired by a low-income school.

Finally, one commenter asked whether all of the elementary or secondary schools at which a grant recipient teaches must be considered low-income to satisfy the ATS if the grant recipient's full-time status as a teacher is achieved by employment at more than one school.

Discussion: There is a shortage of teachers in elementary and secondary low-income schools that experienced teachers have not filled. The TEACH Grant program was established to address this need, among others, by providing incentives in the form of grants of up to $4,000 per year to students who make a commitment to teach in a public or private non-profit elementary or secondary low-income school.

We believe that providing relief to a TEACH Grant recipient who does not live within a reasonable distance of a low-income school or who is not hired by a low-income school would be contrary to the intent of the TEACH Grant program. We believe that under the regulations, TEACH Grant recipients will receive enough information to make an informed choice regarding their ability to meet the requirements of the ATS, including the requirement to teach in a low-income school. Section 686.32 requires that a TEACH Grant recipient receive extensive counseling before grant funds are disbursed each year that emphasizes that by receiving TEACH Grant funds, a student is committing to a teaching service obligation. Both initial and exit counseling requirements in § 686.32(a)(3)(ii) and (c)(4)(iii), respectively, require a school to provide grant recipients with information on how to access the Directory of Low-Income Schools so that TEACH Grant recipients can familiarize themselves with the name and location of every designated low-income school in the United States. Moreover, section 420N(b)(1)(A) of the HEA allows a TEACH Grant recipient eight years to satisfy his or her teaching service obligation of four years. This eight-year timeframe builds in four years for TEACH Grant recipients who do not begin their teaching service immediately and provides them with ample time to locate and apply to teach in a low-income elementary or secondary school.

Finally, all of the elementary or secondary schools at which a grant recipient teaches must be designated as low-income to satisfy the ATS if the grant recipient's full-time status as a teacher is achieved by employment at more than one school. This policy is consistent with the policy applied to borrowers in the Title IV, HEA loan programs with regard to teacher loan forgiveness.

Changes: None.

Comment: One commenter suggested that the Secretary include the definition of ''highly-qualified teacher,'' or a link to a Web site that contains the definition, in the ATS developed by the Department in accordance with § 686.12 so that TEACH Grant recipients know what requirements they must meet to be considered a highly-qualified teacher and to satisfy their teaching service obligation.

Discussion: The Secretary agrees with the commenter that it is important for TEACH Grant recipients to have access to the definition of ''highly-qualified teacher.'' We will ensure that the initial version of the ATS includes the appropriate statutory cites so that a TEACH Grant recipient can research the definition of highly-qualified teacher. We will consider other options for providing this information when the Agreement is revised in the future.

Changes: None.

Comment: One commenter supported the provisions of § 686.12(c)(1) that allow creditable teaching service to apply to more than one ATS.

One commenter believed that § 686.12(c)(1) should allow a student to incur only one ATS, instead of one ATS for each program of study for which a student received TEACH Grants, if a student must complete both a baccalaureate and a post-baccalaureate degree in order to begin a career in teaching.

Another commenter requested that we clarify whether a teacher who received Stafford Loans as an undergraduate and who successfully completed five years of teaching service to obtain loan forgiveness on those loans could use the same teaching service to immediately satisfy an ATS associated with the receipt of TEACH Grants for a subsequent master's degree.

Discussion: The Secretary agrees that, under certain circumstances, it is appropriate to apply creditable teaching service to more than one ATS and appreciates the commenter's support for this provision. For instance, if a grant recipient completes a TEACH Grant-eligible program at a TEACH Grant-eligible institution and immediately enrolls in another TEACH Grant-eligible program at a TEACH Grant-eligible institution before beginning a career in teaching, the recipient may request a suspension of the eight-year time period under § 686.41(a)(1) for the period of enrollment in the subsequent program and upon completion of the subsequent program, apply all qualified teaching service to both service obligations.

Another example would be when a grant recipient completes a TEACH Grant-eligible program at a TEACH Grant-eligible institution and begins qualified teaching service to meet the service obligation before enrolling in a subsequent TEACH Grant-eligible program. In this case, the recipient may request a suspension of the eight-year time period associated with the first service obligation under § 686.41(a)(1) for the period of enrollment in a subsequent program and, upon completion of the subsequent program, apply qualified teaching service performed after the completion of the subsequent program to both service obligations. The qualified teaching service performed before the suspension would count only toward fulfillment of the first service obligation.

The requirement in § 686.12(c)(1) that a TEACH Grant recipient must complete an ATS for each program of study for which the recipient received a TEACH Grant is based on section 420N(b)(1)(A) of the HEA. The Secretary does not have the authority to change a statutory requirement.

Lastly, a TEACH Grant recipient can use only prospective, creditable teaching service performed after the student completed or ceased to be enrolled in the program for which the TEACH Grant was received to satisfy the requirements of the ATS, not teaching service performed before or during the time the student received a TEACH Grant.

Changes: None.

Comment: One commenter believed that § 686.12(b)(2), which requires a TEACH Grant recipient to annually

submit documentation of creditable teaching service in the form of a certification by a chief administrative officer of the school, should provide protection to TEACH Grant recipients who fail to provide such documentation in a timely manner.

Discussion: A TEACH Grant recipient must annually submit documentation of his or her teaching service or intent to teach within a timeframe necessary to keep the TEACH Grants from converting to Federal Direct Unsubsidized Loans in accordance with the provisions of §§ 686.40 and 686.43. The Secretary believes that these timeframes are reasonable for grant recipients to meet and protect the Federal fiscal interest by allowing for the conversion of TEACH Grants to loans when the Secretary cannot verify or document a grant recipient's intent to satisfy the ATS.

Changes: None.

Comment: Several commenters recommended that the Secretary amend § 686.12(d) to allow a TEACH Grant recipient who completes a TEACH Grant-eligible program in a field that is listed in the Nationwide List to satisfy the requirement to teach in a high-need field if the high-need field in which he or she prepared to teach is no longer listed in the Nationwide List for the State in which the grant recipient begins teaching. The commenters believed that a TEACH Grant recipient, who in good faith undertakes the coursework necessary to teach in a designated high-need field, should not be punished for circumstances that are beyond his or her control.

Discussion: The HEA specifically states in section 420N(b)(1)(C) that a TEACH Grant recipient must ''teach'' in a high-need field in accordance with their ATS. We do not have the authority to allow a TEACH Grant recipient who completes a TEACH Grant-eligible program in a field that is listed in the Nationwide List to satisfy the requirement to teach in a high-need field if the high-need field in which he or she prepared to teach is no longer considered a high-need field in the recipient's state and is no longer included in the Nationwide List for the State in which the grant recipient begins teaching. If the high-need field in which a TEACH Grant recipient prepared to teach is included in the Nationwide List for a State other than the State in which the grant recipient planned to teach, the grant recipient may apply to teach in that State in order to fulfill his or her ATS.

Changes: None.

Comment: Several commenters were concerned that TEACH Grant recipients who intend to become elementary school teachers may not be able to meet their teaching service obligation because, as elementary school teachers, they may not be able to teach the majority of their classes in high-need fields as required by § 686.40(c)(1). The commenters suggested that § 686.12 specifically state how elementary school teachers can demonstrate that they are teaching in high-need fields.

Another commenter suggested that, because the purpose of the TEACH Grant program is to provide an incentive to get highly-qualified teachers into low-income schools, it would be consistent with this purpose for the Secretary to define all classroom teaching in elementary schools that includes math, science, and other defined high-need fields as qualifying teaching service in a high-need field.

One commenter suggested that the ATS include information alerting TEACH Grant recipients who intend to become elementary school teachers that they may not be able to meet their teaching service obligation to teach the majority of their classes in high-need fields so that students in a TEACH Grant eligible program can make a more informed decision regarding receipt of a grant.

Discussion: Section 420N(b)(1)(C) of the HEA requires that a TEACH Grant recipient enter into an agreement in which he or she commits to teach in mathematics, science, a foreign language, bilingual education, special education, as a reading specialist, or in any other high-need field documented by the Federal government or a State or local government and approved by the Secretary in exchange for the grant. In recognition of the fact that TEACH Grant recipients who intend to become elementary school teachers may not be able to meet the requirement to teach in a high-need field because of the nature of elementary school curriculum, §§ 686.12(b)(1)(iii) and 686.40(c)(1)(i) and (ii) permit a teacher to fulfill the requirement to teach in a high-need field if the majority of classes taught are in a high-need field. We believe that these provisions sufficiently address how an elementary school teacher can meet the requirements of his or her ATS.

Because the statute requires a TEACH Grant recipient to teach in a high-need field, we do not believe that we have the authority to interpret this provision to consider all classroom teaching in elementary schools that includes math, science, and other defined high-need fields as qualifying teaching service in a high-need field.

We also do not believe that it is appropriate to include a warning in the ATS that TEACH Grant recipients who intend to become elementary school teachers may not be able to meet their teaching service obligation unless they teach the majority of their classes in high-need fields. Instead, we will make it clear in the ATS that a teacher may fulfill the requirement to teach in a high-need field if the majority of classes taught are in a high-need field.

It is important to note in this discussion that an elementary school teacher can also satisfy the requirement to teach in a high-need field if the State in which he or she teaches designates ''elementary school teachers'' as a high-need field. In this case, the designation alone satisfies the requirement to teach in a high-need field, regardless of whether the majority of the classes taught by the grant recipient were taught in a high-need field. An elementary school teacher can also satisfy the requirement to teach in a high-need field if he or she is a full-time teacher in mathematics, science, a foreign language, bilingual education, or special education or is a reading specialist.

Changes: None.

Submission Process and Deadline for a SAR or ISIR (§ 686.20)

Comment: One commenter asked how an institution would have an official EFC computed by the Central Processing System (CPS) and an accurate EFC without having a valid SAR or valid ISIR. The commenter also questioned whether the intent of the proposed regulations was to provide for an institutional or third-party need analysis.

Discussion: As with the other Title IV, HEA programs, the EFC must be calculated using the Federal methodology need analysis provided in Title IV, Part F of the HEA (Federal Methodology). An institution may receive an official EFC computed by CPS that is not based on accurate information. To determine the amount of a student's TEACH Grant in accordance with § 686.21(c), an institution would need an EFC based on accurate information, even if the EFC is not computed by CPS. In lieu of a CPS-calculated EFC based on information from a valid SAR or valid ISIR, an institution may hand-calculate a Federal Methodology EFC based on accurate information, or the institution may use a vendor's product to calculate a Federal EFC. An institution may not use the EFC of a need analysis methodology other than the Federal Methodology.

Changes: None.

Calculation of a Grant and Calculation of a Grant for a Payment Period (§§ 686.21 and 686.22)

Comment: One commenter was concerned with the relationship between payments for payment periods and a student's TEACH Grant Scheduled Awards. The commenter cited the example of a program that operates on a quarter schedule with three quarters in the fall through spring and a summer quarter, each with 11 weeks of instructional time, and the summer quarter is treated as part of the prior award year. In this example, the institution has defined its academic year as being 44 weeks of instructional time and 48 quarter hours and uses the payment methodology described in § 686.22(b), commonly referred to as Formula 1. A student attends three quarters starting in the fall quarter, full-time for the first quarter and half-time for the winter and spring quarters, and receives TEACH Grant disbursements of $1,000, $500, and $500 for each of the respective terms from an initial Scheduled Award. The commenter questioned whether the payment for full-time attendance in the following summer term would be $1,000 or the $2,000 balance of the Scheduled Award and, if the amount was $1,000, what would be the disposition of the remaining $1,000 of the student's Scheduled Award and future Scheduled Awards.

Discussion: In a manner similar to the Academic Competitiveness Grant (ACG) and National SMART Grant programs, and unlike the Federal Pell Grant program, a TEACH Grant Scheduled Award is not limited to an award year and remains available to a student until that Scheduled Award is completely disbursed. Payments of a Scheduled Award are calculated by payment period as provided in §§ 686.22 and 686.25.

In the commenter's example, the student would receive a $1,000 disbursement in the summer term, the payment for the payment period as calculated under § 686.22(b). The remaining balance of $1,000 from the Scheduled Award remains available for the next payment period in which the student enrolls. As an example, assume a student is otherwise TEACH Grant-eligible and enrolls in the subsequent fall and winter quarters as a half-time student and then in the spring quarter as a full-time student. The student would receive $500 payments for the fall and winter quarters from the initial Scheduled Award partially disbursed in the prior award year and would complete the use of that Scheduled Award. In the subsequent spring quarter, the student would receive an initial $1,000 disbursement from the student's next Scheduled Award.

Changes: None.

Comment: One commenter asked for clarification of the relationship between the payment methodologies to calculate a grant under §§ 686.22 and 686.25 and the requirement that the grant, in combination with Federal and other student financial assistance that a student may receive, may not exceed the Title IV, HEA program cost of attendance (COA). The commenter also questioned the relationship between annual awards that take into account part-time attendance and full-time COA and part-time COA in determining the amount of a student's TEACH Grant. The commenter suggested that it would be simpler to follow the model of determining payments under the campus-based programs (*i.e.* , Federal Perkins Loan Program and Federal Supplemental Educational Opportunity Grant Program).

Discussion: An institution is required to calculate a TEACH Grant payment for each payment period. However, if the student's TEACH Grant in combination with other aid for the enrollment period covered by the aid, *e.g.* , a one-term period of enrollment, exceeds the student's COA for the enrollment period, the payment of the TEACH Grant must be reduced. This same principle would hold true in the treatment of a part-time COA in combination with a part-time TEACH Grant payment for a period of enrollment covered by the aid and COA.

Section 401M(c)(1) of the HEA requires that a student's TEACH Grant payments must be reduced if the student is not attending full-time. The amount of the grant is reduced in proportion to the degree to which the student is not attending on a full-time basis. Similar adjustments must be made in the Federal Pell Grant, ACG, and National SMART Grant programs. There is no comparable adjustment required under the HEA for the campus-based programs. These regulations, therefore, use the same methodologies for calculating a payment for a payment period as do the Federal Pell Grant, ACG, and National SMART Grant programs.

Changes: None.

Comment: One commenter sought confirmation that it is the institution's option to use the grant as a replacement for EFC.

Discussion: Under § 686.21(d), an institution is not required to replace a student's EFC with a TEACH Grant. If an institution does replace a student's EFC with a TEACH Grant, the amount of the grant that exceeds the student's EFC is considered estimated financial assistance under 34 CFR 673.5(c).

Changes: None.

Determination of Eligibility for Payment (§ 686.31)

Comment: Several commenters expressed concern about the requirement in § 686.31(a)(2) that for each payment period, an institution may pay a TEACH Grant to an eligible student only after determining that the student has completed the relevant counseling. The commenters interpreted this provision to require recipients to receive counseling prior to each grant disbursement, which they believe to be excessive.

Discussion: We intended § 686.31(a)(2) to require institutions to ensure that initial counseling is conducted prior to making the first disbursement of the student's first TEACH Grant and subsequent counseling is conducted prior to making the first disbursement of any subsequent TEACH Grant. Because these counseling requirements are triggered only by the first disbursement of a TEACH Grant, they are only required annually. For clarity, we have amended § 686.31(a)(2) to reflect the annual nature of the counseling.

Changes: Section 686.31(a)(2) is amended by adding the words ''initial or subsequent'' before ''counseling''.

Counseling Requirements (§ 686.32)

Comment: We received several comments suggesting that the TEACH Grant counseling requirements reflected in § 686.32 will place an additional burden on financial aid offices. Some commenters requested that the Department develop counseling materials for institutions to use or develop and make available to students applying for a TEACH Grant an online, interactive counseling program. One commenter requested that the Department make an online counseling program a priority so that it could be available for the 2008–2009 award year. A few commenters suggested that required counseling could be electronically connected to the ATS, which the student will complete online. Another commenter noted that many students already resist current financial aid counseling that is offered and, for that reason, they do not believe that students will embrace the additional TEACH Grant counseling requirements. One commenter supported comprehensive counseling while another commenter asked the Department to eliminate the subsequent

counseling requirements in § 686.32(b) altogether.

One commenter asked the Department to add a requirement that students have documentation, either from the Department or from a college financial aid office, showing that they completed the required counseling before an institution can disburse the TEACH Grant. Another commenter asked the Department to clarify what the timeframe is in which counseling must be provided to students. Finally, one commenter noted that there are slight differences between the TEACH Grant counseling requirements and the Stafford Loan counseling requirements and asked the Department to clarify whether or not these differences are intentional.

Discussion: We appreciate the administrative burden associated with the counseling requirements, but we strongly believe that extensive counseling is necessary given the complex nature of the TEACH Grant program and, in particular, the potential for a grant under this program to convert to a Federal Direct Unsubsidized Loan. As mentioned in the preamble to the NPRM, the Department and the non-Federal negotiators who participated in the negotiated rulemaking sessions for the TEACH Grant program agreed that students should be given as much information as possible about the TEACH Grant program and its requirements. The Department believes that providing initial counseling for students is necessary so that each TEACH Grant recipient understands the rights and responsibilities that are attached to a grant award. Subsequent counseling sessions remind students of those rights and responsibilities. Exit counseling reminds students about their service obligation and gives them information similar to that given to loan recipients when they leave school. Students who do not complete the initial or subsequent counseling requirements, whichever is appropriate, will not be eligible to receive a TEACH Grant. Thus, students who are interested in receiving a TEACH Grant will have to complete the annual counseling requirement regardless of whether or not they agree with the requirement.

The Department intends to provide online, interactive counseling that will be connected to the ATS. Once this online counseling is in place, students will be required to complete it before they can access and sign the ATS. Because students who do not complete an ATS are not eligible to receive a TEACH Grant, this ensures that all recipients will have completed the counseling. Unfortunately, the Department will not be able to provide online counseling during the 2008–2009 award year, but we are hopeful that on-line counseling will be available beginning with the 2009–2010 award year.

Under § 686.32, an institution is required to ensure that initial, subsequent, and exit counseling is provided, as appropriate, to each TEACH Grant recipient. Institutions, therefore, will be required to provide counseling until the Department makes an online TEACH Grant counseling program available. At that time, to fulfill the requirements of § 686.32, institutions will be responsible not for providing the counseling, but instead for ensuring that the necessary counseling has been provided (*i.e.*, obtaining documentation evidencing that the student received appropriate counseling).

To provide institutions as much flexibility as possible, the Department has decided not to require institutions to collect a specific form from students to show that they have completed the required counseling. However, institutions can require their students to submit a specific form, if they choose. Once the Department begins to offer online counseling with the ATS, students will be able to print off a copy of the ATS, which could serve as proof that they have completed the online counseling (they will be unable to access and sign the ATS without first completing the online counseling session). If it chooses, an institution can request that each student provide a copy of his or her completed ATS for that student's file. Also, nothing in the regulations prohibits institutions from requiring students to receive additional in-person counseling, prior to receiving a TEACH Grant.

The regulations indicate that an institution must ensure that a student receives either initial or subsequent counseling, whichever is appropriate, prior to the first disbursement of the grant award. While the Department would prefer that institutions provide initial and subsequent counseling to students before the students sign an ATS, we realize that this could be difficult and so the Department did not specify in the regulations the specific timeframe in which counseling must take place. We believe that this gives institutions flexibility and will allow them to provide counseling at a time that best suits their needs and the needs of their students so long as students receive counseling before the first disbursement of the TEACH Grant.

The Department used the current counseling requirements for the William D. Ford Federal Direct Loan Program as an example when formulating the TEACH Grant counseling requirements. However, the requirements for the Direct Loan Program and the TEACH Grant program do differ slightly. These differences are intentional. For example, the initial counseling requirements for the Direct Loan Program state that the initial counseling must explain the use of a Master Promissory Note (MPN) whereas, because the TEACH Grant program does not use a MPN, this requirement is not included in the TEACH Grant counseling requirements. Also, the exit counseling section of the Direct Loan regulations states that the exit counseling must inform the student borrower of the average anticipated monthly payment amount based on the student's overall indebtedness or on the average indebtedness of Direct Subsidized Loan and Federal Direct Unsubsidized Loan borrowers at the same school or in the same program of study. In the TEACH Grant regulations the Department requires that exit counseling inform the student of the average anticipated monthly amount based only on the student's TEACH Grant indebtedness, which could be in addition to any other loan indebtedness that the student may incur. This is due to the fact that institutions will not have an average indebtedness of TEACH Grant recipients. Most TEACH Grants that convert to a loan will not do so until several years after a TEACH Grant recipient has left the institution.

Changes: None.

Recalculation of TEACH Grant Award Amounts (§ 686.35)

Comment: One commenter suggested that we change the title of this section to ''Recalculation of eligibility for TEACH Grant award'' to be consistent with a similar section of the Pell Grant Program regulations.

Discussion: The Secretary agrees that the heading for this section should reflect better the substance of the section. Under this section, an institution can recalculate the amount of a TEACH Grant award in response to changes in the student's enrollment status and changes in the student's cost of attendance.

Changes: The section heading of § 686.35 is changed to ''Recalculation of TEACH Grant award amounts.''

Documenting the Service Obligation (§ 686.40) and Periods of Suspension (§ 686.41)

Comment: None.

Discussion: After negotiated rulemaking was completed, the Department learned that two new

military family leave provisions were added to the Family and Medical Leave Act (FMLA) by the National Defense Authorization Act Fiscal Year 2008 (Pub. L. 110–181) and that the Department of Labor was in the process of receiving public comment on an NPRM for the FMLA implementing regulations, which included a description of the new military family leave provisions, a discussion of the issues, and a series of questions seeking public comment on subjects and issues to be addressed in final regulations. The Secretary committed in the TEACH Grant NPRM to consult with the Department of Labor when developing TEACH Grant final regulations so that the provisions in §§ 686.40(e)(1) and 686.41(a)(1) would accurately reflect qualifying reasons for leave under the FMLA, including qualifying leave reasons under the new military family leave provisions. At the time of publication of the final TEACH Grant program regulations, the Department of Labor was still reviewing the comments received on the FMLA NPRM and had not published revised final regulations.

Additionally, it was brought to our attention that references to ''conditions covered under the FMLA'' could imply that the coverage, eligibility, notification, certification and other provisions of the FMLA might need to be met in order for the condition to be one which merited extension of the pay back time. It is not our intention that other qualifying criteria for employees to take leave under the FMLA apply, or even that leave be taken as a result of such condition. The criteria will be met if a TEACH Grant recipient is unable to meet obligations of the grant due to a condition that would be a qualifying reason for leave under the FMLA. Moreover, because the FMLA may change, as it did in 2008, by Congressional action in the future, we believe that it is appropriate for the TEACH Grant regulations to reference the applicable provisions of the FMLA, rather than to repeat those provisions in the text of the TEACH Grant program regulations. We believe that these references will be a more accurate source of information for TEACH Grant recipients who are seeking a suspension from the Secretary of the eight-year period for completion of the service obligation when complying with §§ 686.40 and 686.41 of the TEACH Grant regulations based on a condition that would be considered a qualifying reason for leave under the FMLA.

Changes: We have amended §§ 686.40 and 686.41 by removing the ''list of conditions covered'' by the FMLA and adding, in its place, a reference to qualifying reasons for leave under the FMLA (29 U.S.C. 2612(a)(1) and (3)).

Periods of Suspension (§ 686.41)

Comment: Several commenters supported the addition of suspension periods to the TEACH Grant program as a measure of protection for grant recipients who, for reasons beyond their control, need an extension of the eight-year period for completion of the teaching service obligation.

Discussion: The Secretary appreciates the commenters' support.

Changes: None.

Comment: Several commenters suggested that § 686.41(b) be amended to allow TEACH Grant recipients to request a suspension within a 12-month period—rather than a 6-month period—after the date that they either stop teaching or complete or otherwise cease enrollment in a TEACH Grant-eligible program.

Another commenter noted that under current § 686.41(b), a TEACH Grant recipient must request a suspension within six months of ceasing enrollment in a TEACH Grant-eligible program and that this period of time conflicts with the trigger for conversion of a TEACH Grant to a Federal Direct Unsubsidized Loan in § 686.43(a)(2) because, under that provision, conversion occurs within 120 days of ceasing enrollment in the TEACH Grant-eligible program if the grant recipient fails to notify the Secretary that he or she is teaching or still intends to teach full-time in accordance with the ATS. The commenters suggested that the Secretary synchronize the timeframes for requesting a suspension and the timeframes under which a TEACH Grant could convert to a Federal Direct Unsubsidized Loan so that a grant is not converted to a loan before the TEACH Grant recipient has an opportunity to request a suspension.

Discussion: We agree that the deadline by which a TEACH Grant recipient must request a suspension and the time that a TEACH Grant may convert to a Federal Direct Unsubsidized Loan should not conflict. However, we do not believe that amending the regulations to require TEACH Grant recipients to request a suspension within 12 months of completing or ceasing enrollment in a TEACH Grant-eligible program or stopping teaching service is appropriate because such a change would not resolve the conflicts between § 686.41(b), which gives a student 12 months to request a suspension, and § 686.43(a)(2), under which a TEACH Grant could convert to a Federal Direct Unsubsidized Loan 120 days after the recipient completes a TEACH Grant-eligible program if the student does not notify the Secretary.

To address the potential conflict, we amended § 686.41(b) in two ways: (1) By removing the requirement that a TEACH Grant recipient make a request for a suspension within six months of completing or otherwise ceasing enrollment or after he or she stops teaching; and (2) by adding, in its place, a requirement that a TEACH Grant recipient request a suspension prior to being subject to any of the conditions under § 686.43(a)(1) through (a)(5) that would cause the TEACH Grant to convert to a Federal Direct Unsubsidized Loan. With these changes, a suspension request would have to be made by the TEACH Grant recipient within 120 days of ceasing enrollment in a TEACH Grant-eligible program if the grant recipient has failed to confirm with the Secretary, within the 120-day period, that he or she is or intends to be employed full-time in accordance with the terms and conditions of the student's ATS. If the recipient notifies the Secretary in accordance with § 686.40(a), he or she still may request a suspension, but must do so before any of the conditions identified in § 686.43(a)(1), (a)(3), (a)(4), and (a)(5) occur.

Changes: We amended § 686.41(b) to require that a grant recipient must apply for a suspension prior to being subject to any conditions in § 686.43(a)(1) through (a)(5) that would convert the TEACH Grant to a Federal Direct Unsubsidized Loan.

Comment: One commenter asked if it would be appropriate to add the phrase ''as a highly-qualified teacher'' to the end of § 686.41(a)(1)(i). The commenter believed this additional language would assist a TEACH Grant recipient by broadening the circumstances under which a suspension can be requested to include enrollment in programs that confer the status of ''highly qualified.''

Discussion: We do not believe it is necessary to add the phrase ''as a highly-qualified teacher'' to the end of § 686.41(a)(1)(i). If a student is seeking a suspension to enroll in a program of study that has been determined by a State to satisfy the requirements for certification or licensure to teach in the State's elementary or secondary schools, the program's course work must address the State-determined standards for highly-qualified teachers by definition.

Changes: None.

Obligation To Repay the Grant (§ 686.43)

Comment: One commenter asked if the counseling requirements in § 686.32

require an institution to determine when a TEACH Grant converts to a Federal Direct Unsubsidized Loan and, if so, whether an institution would be required to participate in the Federal Direct Loan Program in order to participate in the TEACH Grant program.

Discussion: The Secretary will determine when a TEACH Grant converts to a Federal Direct Unsubsidized Loan in accordance with § 686.43(a). The counseling requirements in § 686.32 in no way require an institution that participates in the TEACH Grant program to convert a TEACH Grant to a loan. Moreover, nothing in the TEACH Grant program regulations requires institutions that participate in the TEACH Grant program to participate in the Direct Loan Program. Under § 686.40(a), it is the responsibility of the TEACH Grant recipient to notify the Secretary within 120 days of completing or ceasing enrollment in a TEACH Grant-eligible program and annually thereafter about his or her plans to satisfy the ATS, to request a suspension, and to document creditable teaching service. The Secretary will track a TEACH Grant recipient's enrollment status and progress in meeting the terms and conditions of the recipient's ATS and will determine if and when a TEACH Grant converts to a Federal Direct Unsubsidized Loan based on this information.

Changes: None.

Comment: Several commenters were concerned that no appeal process is available to a TEACH Grant recipient whose TEACH Grant converts to a Federal Direct Unsubsidized Loan. The commenters believed that the regulations should provide for an appeal process so that a TEACH Grant recipient's individual circumstances that caused the recipient to fail to satisfy the terms and conditions of his or her ATS could be evaluated or so that a conversion of a TEACH Grant to a loan that was done in error could be corrected.

Discussion: We do not believe that an appeals process is necessary because a number of protections are already built into the TEACH Grant program. First, under the HEA, recipients have eight years to complete a four-year service obligation—this builds in four extra years for recipients with ''mitigating circumstances'' to satisfy their service obligation. Moreover, suspensions of the service obligation requirements are available under a number of defined situations a recipient could face. For example, § 686.41(a) provides up to three years of eligibility for a suspension of the eight-year period in which a TEACH Grant recipient has to satisfy the conditions of his or her ATS based on enrollment in a TEACH Grant-eligible program or a program of study to obtain a State license to teach, or a condition that is a qualifying reason for leave under the FMLA. TEACH Grant recipients also may request a suspension for an unlimited period of time to meet certain military obligations. Finally, if a TEACH Grant is converted to a Federal Direct Unsubsidized Loan in error, the grant recipient may contact the Department of Education's Student Loan Ombudsman or other Department staff to resolve the matter.

Changes: None.

Comment: Several commenters recommended that the regulations permit a TEACH Grant recipient to cancel the TEACH Grant within a reasonable timeframe. The commenters noted that otherwise, a TEACH Grant recipient would be required to request conversion of the TEACH Grant to a Federal Direct Unsubsidized Loan under § 686.43(a)(1) if the recipient decided that he or she does not want the TEACH Grant.

Discussion: We agree that a TEACH Grant recipient should be able to cancel all or part of a TEACH Grant within a reasonable time without having to request that the TEACH Grant be converted to a Federal Direct Unsubsidized Loan. We have added a new paragraph (e) to § 686.31 and amended 34 CFR 668.165 to require that an institution provide the same notices and cancellation opportunities to TEACH Grant recipients that it provides to borrowers in the Title IV, HEA loan programs.

Changes: We have added a new paragraph (e) to § 686.31 of the TEACH Grant program regulations and amended 34 CFR 668.165(a)(2) to provide that, before disbursing a TEACH Grant for any award year, an institution must notify the student of the amount of TEACH Grant funds that the student is eligible to receive, how and when those funds will be disbursed, and the student's right to cancel all or a portion of the TEACH Grant. Under § 686.31(e)(1)(ii) and 34 CFR 668.165(a)(4), an institution must also return the TEACH Grant proceeds, cancel the TEACH Grant, or do both, if the institution receives a TEACH Grant cancellation request from the student no later than the first day of a payment period or 14 days after the date it notifies the student of his or her right to cancel all or a portion of a TEACH Grant. Under § 686.31(e)(2)(i) and 34 CFR 668.165(a)(4)(iii), if a student requests cancellation of a TEACH Grant after the first day of a payment period or 14 days after the date the institution notifies the student of his or her right to cancel, but within 120 days of the TEACH Grant disbursement date, the institution may return the TEACH Grant proceeds or cancel the TEACH Grant, or both. Finally, under § 686.31(e)(2)(ii), if the institution does not return the TEACH Grant proceeds, or cancel the TEACH Grant, the institution must notify the student that he or she may contact the Secretary to request that the TEACH Grant be converted to a Federal Direct Unsubsidized Loan.

Comment: One commenter stated that interest should begin accruing on the date that a TEACH Grant is converted to a Federal Direct Unsubsidized Loan, not on the date that the TEACH Grant was disbursed.

Discussion: Section 420N(c) of the HEA provides that interest accrues from the date that a TEACH Grant was disbursed. The Secretary does not have the authority to change this statutory requirement.

Changes: None.

Comment: One commenter asked whether the Department would assess origination or insurance fees on a Federal Direct Unsubsidized Loan that was originally a TEACH Grant.

Discussion: The Secretary has no plans to assess origination or insurance fees on a Federal Direct Unsubsidized Loan that was originally a TEACH Grant.

Changes: None.

Comment: One commenter supported § 686.43(b), which exempts TEACH Grants that convert to Federal Direct Unsubsidized Loans from annual and aggregate loan limits, as an appropriate protection for TEACH Grant recipients who, for reasons beyond their control, may be unable to satisfy their ATS but still may need Federal student aid. Another commenter stated that the regulations exempting TEACH Grants that convert to Federal Direct Unsubsidized Loans from annual loan limits is unwise because students who have no plans to teach may accept TEACH Grants as a means of borrowing more than current annual loan limits allow.

Discussion: There are many reasons why a TEACH Grant recipient may be unable to fulfill his or her ATS, thereby triggering conversion of TEACH Grants to Federal Direct Unsubsidized Loans. In some cases, TEACH Grant recipients whose grants convert to Federal Direct Unsubsidized Loans might immediately exceed aggregate loan limits and be declared ineligible for further Title IV, HEA aid until the loans are paid down.

The Secretary believes this approach is overly punitive.

As discussed earlier in this preamble, although an institution may limit the programs it designates as TEACH Grant-eligible, an institution can never know with certainty whether a student truly intends to fulfill his or her service obligation or whether the student applies for and receives a TEACH Grant only to circumvent loan limits in the Direct Loan Program. We also believe that the extensive counseling and materials provided to TEACH Grant recipients will ensure that only those students who intend to teach receive TEACH Grants.

Changes: None.

Comment: One commenter recommended that we amend the regulations in § 686.43(c) to provide a grace period for a grant recipient whose TEACH Grant has been converted to a Federal Direct Unsubsidized Loan. The commenter stated that the purpose of a grace period is to allow adequate time for a graduate to find employment before beginning repayment. The commenter believed that it was unfair to expect a TEACH Grant recipient to begin repayment immediately.

Discussion: The Secretary agrees with the commenter. We have reviewed our initial budget assumptions and have determined that there is no cost associated with making a change to the final regulations and providing a grace period in § 686.43(c) to a grant recipient whose TEACH Grant has been converted to a Federal Direct Unsubsidized Loan. The provision of a grace period to a TEACH Grant recipient whose grant has converted to a loan also mirrors the terms of the Direct Loan Program with regard to entering repayment.

Changes: We have amended § 686.43(c) to provide a grace period for a grant recipient whose TEACH Grant has been converted to a Federal Direct Unsubsidized Loan.

Comment: One commenter recommended that § 686.43(c) specify that a grant recipient who is in school when his or her TEACH Grant converts to a Federal Direct Unsubsidized Loan is eligible for an in-school deferment so that such students do not have to begin making payments immediately upon conversion of the TEACH Grant.

Discussion: A grant recipient whose TEACH Grant has been converted to a Federal Direct Unsubsidized Loan is eligible for most of the benefits of the Direct Loan Program. These benefits include an in-school deferment as long as the borrower is eligible under 34 CFR 685.204(b)(1). We agree that the regulations should highlight this benefit so that TEACH Grant recipients who are in school at the time of conversion are aware of it.

Changes: We have amended § 686.43(c)(2) by adding the words ‘‘, including an in-school deferment’’ at the end of the paragraph.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ‘‘significant’’ and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ‘‘significant regulatory action’’ as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ‘‘economically significant’’ rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive Order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is ‘‘economically significant’’ and subject to OMB review under section 3(f)(1) of Executive Order 12866. Accordingly, the Secretary has assessed potential costs and benefits of this regulatory action and has determined the benefits justify the costs.

Need for Federal Regulatory Action

As discussed in the NPRM, these regulations are needed to implement provisions of the HEA, as amended by the CCRAA, that established the TEACH Grant program. The Secretary has exercised limited discretion in implementing the CCRAA provisions in the following areas:

- *Definition of elementary and secondary academic year:* The CCRAA provides that a grant recipient must serve as a full-time teacher for a total of not less than four academic years within eight years after completing the program of study for which he or she received a TEACH Grant.
- *TEACH Grant-eligible institution:* The CCRAA provides that an eligible institution for purposes of the TEACH Grant program must be an institution of higher education as defined in section 102 of the HEA that is financially responsible and that provides: High-quality teacher preparation and professional development services, including extensive clinical experience as part of pre-service preparation; pedagogical coursework, or assistance in the provision of such coursework; and supervision and support services to teachers, or assistance in the provision of such services, or that provides a post-baccalaureate program of instruction.
- *Calculation of Grade-Point Average for Transfer Students:* The CCRAA requires students to have a grade-point average of 3.25 on a 4.0 scale to be eligible to receive a TEACH Grant; and
- *Counseling:* The CCRAA requires schools to provide counseling at a number of points to provide participating students with information on the program and, in particular, to underscore the student's responsibilities in the event the program's service requirements are not fulfilled.
- *Discharge of Service Agreement:* The CCRAA does not address the discharge of a service obligation if a TEACH Grant recipient dies or becomes totally and permanently disabled.

The following section addresses the alternatives that the Secretary considered in implementing these discretionary portions of the CCRAA provisions.

Regulatory Alternatives Considered

A broad range of alternatives to the regulations was considered as part of the negotiated rulemaking process. These alternatives were reviewed in detail in the preamble to the NPRM under both the *Regulatory Impact Analysis* and the *Reasons* sections accompanying the discussion of each proposed regulatory provision. To the extent they were addressed in response to comments received on the NPRM, alternatives are also considered elsewhere in the preamble to these final regulations under the *Discussion* sections related to each provision. No comments were received related to the *Regulatory Impact Analysis* discussion of these alternatives.

Net Budget Impacts

As noted in the NPRM, the TEACH Grant program is estimated to have a net budget impact of $7 million in 2008 and $74 million over FY 2008–2012. For budget, financial management, and cost estimation purposes, TEACH Grants will be operated as a loan program with

100 percent forgiveness of outstanding principal and interest upon completion of a student's service obligation. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for this program reflect the estimated net present value of all future non-administrative Federal costs associated with awards made in a given fiscal year. Details on how these estimates were developed are provided in the *Regulatory Impact Analysis* section of the NPRM.

The administrative burden associated with §§ 686.4, 686.11, 686.32, and 686.34 of the TEACH Grant final regulation package has been estimated in accordance with the Paperwork Reduction Act of 1995 and Bureau of Labor Statistics wage information. The total increase in PRA burden associated with the regulations is estimated to be $2.6 million. This amount is comprised of $1.6 million in determining eligibility to receive a grant, $997,245 in complying with counseling requirements, $1,589 in determining institutional eligibility, and $16,775 in covering liability for and recovery of overpayments.

Assumptions, Limitations, and Data Sources

Because these regulations largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the CCRAA and other statutory changes implemented in these regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a wide range of data sources were used, including the National Student Loan Data System, operational and financial data from Department of Education systems, and data from a range of surveys conducted by the National Center for Education Statistics, such as the Baccalaureate and Beyond, Schools and Staffing, and the 1996 Beginning Postsecondary Student surveys. No comments or additional data were received related to the estimates or discussions included in the NPRM.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. Expenditures are classified as transfers to postsecondary students.

TABLE 2.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$17.
From Whom To Whom?	Federal Government To Postsecondary Students.

Waiver of Delayed Effective Date and Congressional Review Act

The Administrative Procedure Act requires that a substantive rule be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). The Secretary has determined that a delayed effective date for these final regulations is unnecessary and contrary to the public interest, and that good cause exists to waive the requirement for a delayed effective date. Pursuant to section 420O of the HEA, Congress directed the Secretary to make TEACH Grants available as of July 1, 2008. To fulfill the intent of Congress that TEACH Grants be available to eligible students beginning on July 1, 2008, the Secretary makes these regulations effective as of the date of publication to enable TEACH Grant-eligible institutions to prepare and forward student financial aid packages as early as possible following the availability of funds for this program. We note that delaying the effective date of the regulations also would prevent a significant number of otherwise eligible students enrolled during the 2008 summer term from being able to receive a TEACH Grant.

These regulations have been determined to be major for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, *et seq.*). However, for the reasons outlined in the preceding paragraph, the Department has determined that, pursuant to section 808(2) of the CRA, the delay in the effective date generally required for congressional review is contrary to the public interest and waived for good cause.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. These final regulations will affect institutions of higher education and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Individuals are also not defined as ''small entities'' under the Regulatory Flexibility Act.

As noted in the NPRM, a significant percentage of the schools participating in the Federal student loan programs meet the definition of ''small entities.'' In general, the Department believes benefits under these final regulations outweigh the relatively small additional burdens, particularly given that institutions finding the program's requirements onerous have the option of not participating. This belief is strongly supported by the fact that the negotiated rulemaking committee reached consensus on the proposed regulations.

In the NPRM, the Secretary invited comments from small institutions as to whether they believe the proposed regulations would have a significant economic impact on them and, if so, requested evidence to support that belief. No comments or data were received.

Paperwork Reduction Act of 1995

Sections 668.165, 686.4, 686.10, 686.11, 686.12, 686.20, 686.31, 686.32, 686.34, 686.36, 686.37, 686.38, 686.40, 686.41, 686.42 and 686.43 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to OMB for its review.

Section 668.165—Notices and Authorizations

The final regulations modify the Student Assistance General Provisions by including the Teacher Education Assistance for College and Higher Education (TEACH) Grant program in subpart K of the Student Assistance General Provisions regulations in 34 CFR part 668 (Cash management). Before an institution disburses Title IV, HEA program funds for any award year, the institution must notify a student of the amounts of funds that the student can expect to receive and how and

when those funds will be disbursed. The institution is required to notify, in writing, the recipient of a TEACH Grant of the student's right to cancel or reduce the amount of the TEACH Grant disbursement, as well as the procedures by which the student must notify the institution. We estimate that the requirements in § 668.165 will increase burden for institutions and individuals by 14,090 hours annually in OMB Control Number 1845–0038.

Section 686.4—Institutional Participation

The final regulations require an institution that ceases to participate in the TEACH Grant program or becomes ineligible to participate during an award year, to report to the Department within 45 days after the effective date of the loss of eligibility. The contents of the report must include the name of each TEACH Grant-eligible student; the amount of the TEACH Grant funds paid to each student for that award year; and the amount of TEACH Grant funds due each eligible student through the end of the payment period. Also, the institution must provide an accounting of all TEACH Grant expenditures for that award year to the date of termination. We estimate that the requirements in § 686.4 will increase burden for institutions by 81 hours in OMB Control Number 1845–XXXX.

Section 686.10—Application

Under the final regulations, a potential TEACH grant recipient must complete and submit an approved and signed application form, as designated by the Secretary prior to the published deadline. Currently, the FAFSA is the designated application form. All undergraduate and most graduate student applicants for Title IV, HEA program assistance must complete and submit the FAFSA. Because the TEACH Grant Program is not a need-based program, some applicants will be required to complete a FAFSA that otherwise may not have been required to complete a FAFSA, thereby generating additional burden. The estimated burden associated with these application requirements is contained in OMB Control Number 1845–0001. We estimate that the burden will increase for individuals by 1,000 hours.

Section 686.11—Eligibility To Receive a Grant

The final regulations establish that in addition to meeting the student eligibility requirements, in order to receive a TEACH Grant the applicant must submit the designated application, sign a TEACH Grant ATS, and enroll in a TEACH Grant-eligible institution. Grant recipients must maintain a GPA of 3.25 on a 4.0 scale during each payment period, score above the 75th percentile on at least one of a battery of nationally-normed standardized tests, or qualify as a current or retired teacher obtaining a master's degree in a TEACH Grant-eligible program. There are several categories of grant recipients who must maintain the cumulative GPA of 3.25 each payment period.

Those categories are:

I. During the initial payment period:

The final cumulative high school GPA for a first term undergraduate recipient—

The TEACH Grant-eligible institution must document the student's secondary school GPA from an LEA, an SEA or other State agency; a public or private high school; or in the case of a home schooled student, obtain documentation of the secondary school GPA from the parent or guardian.

The undergraduate cumulative GPA for either the post-baccalaureate or graduate student recipient—

The TEACH Grant-eligible institution must document the student's undergraduate school cumulative GPA.

The transfer student cumulative GPA as determined by the current TEACH Grant-eligible institution—

The TEACH Grant-eligible institution must document the student's cumulative GPA based upon the method established by the institution to accept coursework completed from any prior postsecondary institution that it accepts.

II. Subsequent payment periods:

The cumulative GPA based on courses taken at the TEACH Grant-eligible institution through the most recently completed payment period, or

III. Alternatives to the cumulative GPA:

Scoring above the 75th percentile of at least one of the battery of tests from a nationally-normed standardized test, or

The TEACH grant recipient is currently a teacher or retiree who is applying for a TEACH Grant to obtain a master's degree in a TEACH Grant-eligible program. We estimate that the paperwork burden associated with § 686.11 will increase for individuals and institutions by 82,675 hours in OMB Control Number 1845–XXXX.

Section 686.12—Agreement To Serve

Under the final regulations, a student must sign an ATS before receiving a TEACH Grant. The ATS provides that a student must fulfill a service obligation for each program for which the student received a TEACH Grant. The ATS explains the terms of the service obligation and provides that if a TEACH Grant recipient does not fulfill the service obligation or otherwise does not meet the requirements of 34 CFR part 686, any TEACH Grant the student received will convert to a Federal Direct Unsubsidized Loan that the student must repay in full to the Secretary, with interest.

The burden associated with the ATS will be reported under OMB Control Number 1845–0083. OMB granted emergency approval of the ATS on May 15, 2008. The ATS will be submitted for public comment under the regular clearance process.

Section 686.20—Submission Process and Deadline for a SAR or ISIR

The final regulations require that participating institutions who disburse TEACH Grant funds to students must electronically transmit data as required by the Secretary. The burden associated with the collection and transmission of the required data is assessed and attributed in 34 CFR 686.37. Therefore, there is no burden associated with this section of the final regulations.

Section 686.31—Determination of Eligibility for Payment and Cancellation of a TEACH Grant

Section 686.31 of the final regulations added notification requirements for an institution awarding TEACH Grants that are consistent with the changes made in 34 CFR 668.165—(Notices and authorizations). The estimated burden associated with these notification requirements is contained in OMB Control Number 1845–0038, as reported under the *Section 668.165—Notices and authorizations* heading. As a result, there is no additional burden associated with § 686.31.

Section 686.32—Counseling requirements

The final regulations require an institution to ensure that initial, subsequent, and exit counseling are provided to each TEACH Grant recipient. The initial counseling is required prior to making the first disbursement of the grant. Initial counseling must include, but is not limited to, explaining the terms and conditions of the TEACH Grant ATS; providing information on how to identify low-income schools and documented high need fields; informing grant recipients of the possibility of a suspension of the eight-year period for completion of the service obligation; and the conditions under which a suspension may be granted. Subsequent counseling, which must occur prior to the first disbursement of a TEACH Grant in a subsequent award year, must

include, but is not limited to reviewing the terms and conditions of the ATS; and emphasizing that if the student fails or refuses to complete the service obligation, the TEACH Grant will convert into a Federal Direct Unsubsidized Loan. Under the final regulations, institutions must ensure that exit counseling is provided to each TEACH Grant recipient before the recipient ceases to attend the institution. Written exit counseling materials may be provided within 30 days after completing a study abroad program or after a student withdraws without notifying the institution. We estimate that the paperwork burden associated with § 686.32 will increase for individuals and institutions by 50,828 hours in OMB Control Number 1845–XXXX.

Section 686.34—Liability for and Recovery of TEACH Grant Overpayments

The final regulations require the institution to promptly provide written notification to a student requesting repayment of any overpayment that the institution does not have responsibility to repay. These final regulations also require that the institution refer the student to the Department if the student does not take positive action to promptly resolve the TEACH Grant overpayment. We estimate that § 686.34 will increase burden for individuals and institutions by 855 hours in OMB Control Number 1845–XXXX.

Section 686.36—Fiscal Control and Accounting Procedures

The final regulations provide that participating institutions must account for the receipt and expenditure of Title IV, HEA program funds in accordance with generally accepted accounting principles. Further, participating institutions must disburse TEACH Grant funds consistent with the cash management regulations in 34 CFR 668.164. Participating institutions must comply with these requirements for the other Title IV, HEA programs and, therefore, there is no additional burden placed upon institutions participating in the TEACH Grant program.

Section 686.37—Institutional Reporting Requirements

Under the final regulations, a participating institution must provide the Secretary information about each TEACH Grant recipient that includes, but is not limited to: The student's eligibility for a TEACH Grant, the amounts of the TEACH Grant disbursed, the anticipated and actual disbursement dates, and the disbursement amounts of the TEACH Grants provided. The initial disbursement information must be submitted to the Department no later than 30 days following the initial disbursement of TEACH Grant funds. Subsequent disbursements, cancellations, and adjustments must be submitted to the Department within 30 days of the transaction. Participating institutions must comply with these requirements for other Title IV, HEA programs and, therefore, there is no additional burden placed upon institutions participating in the TEACH Grant program.

Section 686.38—Maintenance and Retention of Records

The final regulations require participating institutions to maintain the fiscal records for the TEACH Grant program for three years after the end of the award year for which the TEACH Grant was awarded. Participating institutions must comply with these requirements for the other Title IV, HEA programs and, therefore, there is no additional burden placed upon institutions participating in the TEACH Grant program.

Section 686.40—Documenting the Service Obligation

Except as provided in §§ 686.40 and 686.42, the final regulations require a student to confirm to the Secretary in writing, within 120 days of completing or otherwise ceasing enrollment in a program for which the student received a TEACH Grant, that he or she is employed as a full-time teacher in accordance with the TEACH Grant ATS, or is not yet employed, but intends to meet the terms and conditions of the ATS.

The burden associated with this notification requirement will be covered under a new collection. A separate 60-day information collection notice will be published in the **Federal Register** to solicit comment on a notification form once it is developed.

Section 686.41—Periods of Suspension

The final regulations provide that a TEACH Grant recipient may request a suspension of the 8-year period for completion of the TEACH Grant service obligation based on one of the conditions described in § 686.41. The grant recipient must apply for a suspension on a form approved by the Secretary.

The burden associated with this notification requirement will be covered under a new collection. A separate 60-day information collection notice will be published in the **Federal Register** to solicit comment on a suspension request form once it is developed.

Section 686.42—Discharge of Agreement To Serve

Under the final regulations, a TEACH Grant recipient's service obligation will be discharged if the recipient dies, or if the recipient becomes totally and permanently disabled and meets the eligibility requirements for a total and permanent disability discharge in 34 CFR 685.213.

The burden associated with the discharge of a TEACH Grant service obligation based on the grant recipient's death is covered under OMB Control Number 1845–0021 as the TEACH Grant will be recognized as an Federal Direct Unsubsidized Loan for the purposes of the loan discharge for death, consistent with § 685.212. We estimate that the burden will increase for individuals and loan holders by 23 hours in OMB Control Number 1845–0021.

The burden associated with the discharge of a TEACH Grant service obligation based on the grant recipient's total and permanent disability is covered under OMB Control Number 1845–0065.

Section 686.43—Obligation To Repay the Grant

The final regulations specify the conditions under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan that the grant recipient must repay. One of these conditions is when a TEACH Grant recipient who has completed a program for which he or she received a TEACH Grant does not notify the Secretary at least annually of his or her intent to satisfy the TEACH Grant service obligation.

The burden associated with this notification requirement will be covered under the same new collection associated with the notification requirement in § 686.40.

Consistent with the discussion in this *Paperwork Reduction Act of 1995* section, the following chart describes the sections of the final regulations involving information collections, the information being collected, and the collections the Department will submit to OMB for approval and public comment under the Paperwork Reduction Act of 1995.

Regulatory section	Information collection	Collection
668.165	Before an institution disburses Title IV, HEA program funds for any award year, the institution must notify a student of the amounts of funds that the student can expect to receive and how and when those funds will be disbursed. The institution is required to notify in writing, the recipient of a TEACH Grant of the student's right to cancel or reduce the amount of the TEACH Grant disbursement, as well as the procedures by which the student must notify the institution.	OMB 1845–0038. This will be a revision of an existing collection which was submitted to OMB with these final regulations.
686.4	Institutions that cease participation in the TEACH Grant program or otherwise lose eligibility are required to report program data to the Department within 45 days of the change in eligibility.	OMB 1845–XXXX. This will be a new collection.
686.11	A TEACH Grant recipient must (a) score above the 75th percentile on a standardized nationally-normed test, (b) maintain a 3.25 cumulative GPA, or (c) currently be a teacher or retiree obtaining a master's degree in an eligible TEACH Grant program.	OMB 1845–XXXX. This will be a new collection.
686.12	Before receiving a TEACH Grant, a student must sign an ATS. The ATS provides that student must fulfill a service obligation for each program for which the student received a TEACH Grant. The ATS explains the terms of the service obligation and provides that if a TEACH Grant recipient does not fulfill the service obligation or otherwise does not meet the requirements of 34 CFR part 686, any TEACH Grant the student received will be converted to a Federal Direct Unsubsidized Loan that the student must repay in full to the Secretary, with interest.	OMB 1845–0083. OMB granted emergency approval of the ATS on May 15, 2008. The ATS will be submitted for public comment under the regular clearance process in the near future.
686.31	An institution participating in the TEACH Grant program must, before disbursing Title IV, HEA program funds, notify the recipient in accordance with 34 CFR 668.165.	The estimated burden associated with this section of the final regulations is recognized in OMB 1845–0038 Cash Management.
686.32	A participating institution must ensure that initial, subsequent, and exit counseling are provided for all TEACH Grant recipients.	OMB 1845–XXXX. This will be a new collection.
686.34	A participating institution must provide written notice to any TEACH Grant recipient when he or she owes a TEACH Grant overpayment. Moreover, if the recipient does not take positive action to resolve the overpayment within the deadline, the institution must report the overpayment to the Department.	OMB 1845–XXXX. This will be a new collection.
686.40	Except as provided in §§ 686.40 and 686.42, within 120-days of completing or otherwise ceasing enrollment in a program for which the student received a TEACH Grant, the student must confirm to the Secretary in writing that he or she is employed as a full-time teacher in accordance with the TEACH Grant ATS, or is not yet employed, but intends to meet the terms and conditions of the ATS.	OMB 1845–XXXX. This will be a new collection. A separate 60-day information collection notice will be published in the **Federal Register** to solicit comment on this form. The form will be put into the paperwork clearance process by October 2008.
686.41	A TEACH Grant recipient may request a suspension of the 8-year period for completion of the TEACH Grant service obligation based on one of the conditions described in § 686.41. The grant recipient must apply for a suspension on a form approved by the Secretary.	OMB 1845–XXXX. This will be a new collection. A separate 60-day information collection notice will be published in the **Federal Register** to solicit comment on this form. The form will be put into the paperwork clearance process by October 2008.
686.42	A TEACH Grant recipient's service obligation will be discharged if the recipient dies, or if the recipient becomes totally and permanently disabled and meets the eligibility requirements for a total and permanent disability discharge in 34 CFR 685.213.	Discharge of a TEACH Grant service obligation based on the grant recipient's death is covered under OMB 1845–0021. Discharge of a TEACH Grant service obligation based on the grant recipient's total and permanent disability is covered under OMB 1845–0065.
686.43	One of the conditions under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan is if a grant recipient who has completed a program for which he or she received a TEACH Grant does not notify the Secretary at least annually of his or her intent to satisfy the TEACH Grant service obligation.	This will be covered by the same new collection as described for § 686.40.

Assessment of Educational Impact

In the NPRM, and in accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the responses to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.033 Federal Work Study; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Leveraging Education Assistance Partnerships; 84.268 William D. Ford Federal Direct Loan Program; 84.379 TEACH Grant program)

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 673, 675, and 676

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Employment, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 674, 682, and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: June 11, 2008.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends 34 CFR chapter VI as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

■ 2. Section 668.1 is amended by:

■ A. In paragraph (c)(10), removing the word ''and'' that appears after the punctuation '';''.

■ B. In paragraph (c)(11), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

■ C. Adding a new paragraph (c)(12) to read as follows:

§ 668.1 Scope.

* * * * *

(c) * * *

(12) The Teacher Education Assistance for College and Higher Education (TEACH) Grant program.

* * * * *

■ 3. Section 668.2 is amended by:

■ A. In paragraph (b), adding, in alphabetical order, the definitions of ''Teacher Education Assistance for College and Higher Education (TEACH) Grant program'' and ''TEACH Grant''.

■ B. In paragraph (b), amending paragraph (2) of the definition of ''Undergraduate student'' by:

■ i. Removing the word ''and'' following ''(ACG) Program''.

■ ii. Adding '', and TEACH Grant program'' after ''(SMART) Grant Program''.

■ iii. Adding ''and 686.3(a)'' after ''690.6(c)(5)''.

■ C. In paragraph (b), revising the authority citation for the definition of undergraduate student.

The additions and revision read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Teacher Education Assistance for College and Higher Education (TEACH) Grant Program: A grant program authorized by title IV of the HEA under which grants are awarded by an institution to students who are completing, or intend to complete, coursework to begin a career in teaching and who agree to serve for not less than four years as a full-time, highly-qualified teacher in a high-need field in a low-income school. If the recipient of a TEACH Grant does not complete four years of qualified teaching service within eight years of completing the course of study for which the TEACH Grant was received or otherwise fails to meet the requirements of 34 CFR 686.12, the amount of the TEACH Grant converts into a Federal Direct Unsubsidized Loan.

(Authority: 20 U.S.C. 1070g)

TEACH Grant: A grant authorized under title IV–A–9 of the HEA and awarded to students in exchange for prospective teaching service.

(Authority: 20 U.S.C. 1070g)

* * * * *

Undergraduate student:

* * * * *

(Authority: 20 U.S.C. 1070g)

* * * * *

§ 668.4 [Amended]

■ 4. Section 668.4(b)(1) is amended by removing the word ''and'' that appears after ''FSEOG,'' and adding '', and TEACH Grant'' after ''Perkins Loan''.

■ 5. Section 668.8 is amended by:

■ A. In the heading of paragraph (h), adding ''TEACH Grant,'' after ''National SMART Grant,''.

■ B. In paragraph (h)(1), removing the word ''and'' that appears after the punctuation '';''.

■ C. In paragraph (h)(2), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, the words ''; and''.

■ D. Adding a new paragraph (h)(3).

■ E. Revising the authority citation.

The addition and revision read as follows:

§ 668.8 Eligible programs.

* * * * *

(h) * * *

(3) An educational program qualifies as an eligible program for purposes of the TEACH Grant program if it satisfies the requirements of the definition of TEACH Grant-eligible program in 34 CFR 686.2(d).

* * * * *

(Authority: 20 U.S.C. 1070a, 1070a–1, 1070b, 1070c–1, 1070c–2, 1070g, 1085, 1087aa–1087hh, 1088, 1091; 42 U.S.C. 2753)

§ 668.14 [Amended]

■ 6. Section 668.14(f) is amended by:

■ A. In paragraph (f)(1), removing the words ''paragraphs (h) and (i)'' and

adding, in their place, the words ''paragraphs (g) and (h)''.

■ B. In paragraph (f)(3), removing the words ''paragraph (g)'' and adding, in their place, the words ''paragraph (f)''.

■ 7. Section 668.19 is amended by:

■ A. In paragraph (a)(3), removing the word ''or'' the first two times this word appears after the acronym ''ACG,'' and in each instance, adding the words '', or a TEACH Grant'' after ''National SMART Grant''.

■ B. In paragraph (a)(3), removing the word ''or'' the third time this word appears after the acronym ''ACG,'' and adding the words '', or TEACH Grant'' after the third appearance of ''National SMART Grant''.

■ C. Revising the authority citation to read as follows:

§ 668.19 Financial aid history.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091, 1094)

■ 8. Section 668.21 is amended by:

■ A. In paragraph (a)(1), adding the words ''TEACH Grant,'' immediately after the word ''FSEOG,''.

■ B. Revising the authority citation to read as follows:

§ 668.21 Treatment of title IV grant and loan funds if the recipient does not begin attendance at the institution.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094)

■ 9. Section 668.22 is amended by:

■ A. In paragraph (a)(2), adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,''.

■ B. In paragraph (i)(2), adding a new paragraph (i)(2)(v).

■ C. Revising the authority citation.

The addition and revision read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

* * * * *

(i) * * *

(2) * * *

(v) TEACH Grants.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091b)

■ 10. Section 668.24 is amended by:

■ A. In the introductory text of paragraph (e)(1), removing the word ''or'' which appears after ''ACG''.

■ B. In the introductory text of paragraph (e)(1), adding the words '', or TEACH Grant'' immediately in front of the word ''Program''.

■ C. Revising the authority citation to read as follows:

§ 668.24 Record retention and examinations.

* * * * *

(Authority: 20 U.S.C. 1070a, 1070a–1, 1070b, 1070g, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087, 1087a, *et seq.* , 1087cc, 1087hh, 1088, 1094, 1099c, 1141, 1232f; 42 U.S.C. 2753; section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

■ 11. Section 668.26 is amended by:

■ A. In paragraph (d)(1), removing the word ''or'' the first time it appears and adding the words '', or TEACH Grant'' immediately after the words ''National SMART Grant''.

■ B. In paragraph (e)(1), removing the word ''and'' the first time it appears and adding the words '', and TEACH Grant'' immediately after the words ''National SMART Grant''.

■ C. Revising the authority citation to read as follows:

§ 668.26 End of an institution's participation in the title IV, HEA programs.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094, 1099a–3)

■ 12. Section 668.32 is amended by:

■ A. In paragraph (c)(2)(ii), removing the word ''and''.

■ B. In paragraph (c)(3), adding the word ''and'' after the punctuation '';''.

■ C. Adding a new paragraph (c)(4).

■ D. Adding a new paragraph (k)(9).

■ E. Revising the authority citation.

The additions and revision read as follows:

§ 668.32 Student eligibility—general.

* * * * *

(c) * * *

(4) For the purposes of the TEACH Grant program—

(i) For an undergraduate student other than a student enrolled in a post-baccalaureate program, has not completed the requirements for a first baccalaureate degree; or

(ii) For the purposes of a student in a first post-baccalaureate program, has not completed the requirements for a post-baccalaureate program as described in 34 CFR 686.2(d);

* * * * *

(k) * * *

(9) 34 CFR 686.11 for the TEACH Grant program; and

* * * * *

(Authority: 20 U.S.C. 1070g, 1091; 28 U.S.C. 3201(e))

■ 13. Section 668.35 is amended by:

■ A. Redesignating paragraph (g)(4) as paragraph (g)(5).

■ B. Adding a new paragraph (g)(4).

■ C. Revising the authority citation.

The addition and revision read as follows:

§ 668.35 Student debts under the HEA and to the U.S.

* * * * *

(g) * * *

(4) A student is not liable for a TEACH Grant overpayment received in an award year if—

(i) The institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant, ACG, National SMART Grant, or TEACH Grant) payments in that same award year; or

(ii) The institution cannot eliminate the overpayment under paragraph (g)(4)(i) of this section but can eliminate that overpayment by adjusting subsequent TEACH Grant payments in that same award year.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091; 11 U.S.C. 523, 525)

■ 14. Section 668.138 is amended by:

■ A. In paragraph (a), removing the word ''or'' the first time it appears.

■ B. In paragraph (a), adding the words '', or TEACH Grant'' immediately after the words ''National SMART Grant''.

■ C. Revising the authority citation to read as follows:

§ 668.138 Liability.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091, 1094)

■ 15. Section 668.139 is amended by:

■ A. In paragraph (c), adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,''.

■ B. Revising the authority citation to read as follows:

§ 668.139 Recovery of payments and loan disbursements to ineligible students.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091, 1094)

■ 16. Section 668.161 is amended by:

■ A. In paragraph (a)(3)(i), adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,''.

■ B. Revising the authority citation to read as follows:

§ 668.161 Scope and purpose.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094)

■ 17. Section 668.162 is amended by:

■ A. In paragraph (d)(1), adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,''.

■ B. Revising the authority citation to read as follows:

§ 668.162 Requesting funds.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094)

■ 18. Section 668.163 is amended by:
■ A. In paragraph (c)(2), adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,''.
■ B. In the introductory text of paragraph (c)(3), adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,''.
■ C. In paragraph (c)(4), adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,''.
■ D. Revising the authority citation to read as follows:

§ 668.163 Maintaining and accounting for funds.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091, 1094)

■ 19. Section 668.164 is amended by:
■ A. In paragraph (g)(1)(ii), by removing the word ''and'' after ''FSEOG,'' and adding the words '', and TEACH Grant,'' immediately after the words ''Federal Perkins Loan,''.
■ B. In paragraph (g)(2)(ii)(A), removing the word ''or'' that appears after the punctuation ''\;''.
■ C. In paragraph (g)(2)(ii)(B), removing the ''.'' after the words ''to the student'' and adding in its place ''; or''.
■ D. Adding a new paragraph (g)(2)(ii)(C).
■ E. Revising the authority citation.

The addition and revision read as follows:

§ 668.164 Disbursing funds.

* * * * *

(g) * * *
(2) * * *
(ii) * * *

(C) For an award under the TEACH Grant program, the institution originates the award to the student.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094)

§ 668.165 [Amended]

■ 20. Section 668.165 is amended by:
■ A. In the introductory text of paragraph (a)(2), removing the word ''or'' the first time it appears and adding the words '', or TEACH Grant'' after ''Federal Perkins Loan''.
■ B. In paragraph (a)(2)(ii), removing the word ''or'' the third time it appears and adding the punctuation '','' in its place, adding the words '', TEACH Grant, or TEACH Grant disbursement'' immediately after the words ''loan disbursement'', and adding the words '', or the TEACH Grant proceeds returned to the Secretary'' after the words ''and have the loan proceeds returned to the holder of that loan''.
■ C. In paragraph (a)(2)(iii), removing the word ''or'' before the words ''loan disbursement'' and adding, in its place the punctuation '','' and by adding the words '', TEACH Grant, or TEACH Grant disbursement'' immediately after the words ''loan disbursement''.
■ D. In paragraph (a)(4)(i) removing the word ''or'' before the words ''loan disbursement'' and adding, in its place the punctuation '','' and adding the words '', TEACH Grant, or TEACH Grant disbursement'' after the words ''loan disbursement''.
■ E. In the introductory text of paragraph (a)(4)(ii), adding the words ''or TEACH Grant'' before the word ''proceeds'', after the words ''cancel the loan'', and before the words ''cancellation request''.
■ F. In paragraph (a)(4)(ii)(A), adding the words ''or TEACH Grant'' after the words ''or a portion of a loan''.
■ G. In paragraph (a)(4)(iii), adding the words ''or TEACH Grant'' before the word ''proceeds'' and after the words ''cancel the loan''.
■ H. In paragraph (a)(6)(i), adding the words ''. The process under which the TEACH Grant program is administered is considered to be an affirmative confirmation process'' after the words ''loan funds''.
■ I. In paragraph (a)(6)(ii), adding the words ''or TEACH Grant'' before the word ''proceeds''.

■ 21. Section 668.183 is amended by:
■ A. In paragraph (b)(1), removing the word ''Your'' the first time it appears and adding, in its place, the words ''Except as provided in paragraph (b)(3) of this section, your'' at the beginning of the first sentence.
■ B. Adding a new paragraph (b)(3).
■ C. Revising the authority citation.

The addition and revision read as follows:

§ 668.183 Calculating and applying cohort default rates.

* * * * *

(b) * * *

(3) A TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan is not considered for the purpose of calculating and applying cohort default rates.

* * * * *

(Authority: 20 U.S.C. 1070g, 1082, 1085, 1094, 1099c)

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

■ 22. The authority citation for part 673 is revised to read as follows:

Authority: 20 U.S.C. 421–429, 1070b–1070b–3, 1070g, 1087aa–1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

■ 23. Section 673.5 is amended by:
■ A. In paragraph (c)(2)(iii), adding the words ''TEACH Grants,'' immediately after the words ''the amounts of any'' and by removing the word ''loan'' which appears after the words ''if the sum of the''.
■ B. Revising the authority citation to read as follows:

§ 673.5 Overaward.

* * * * *

(Authority: 20 U.S.C. 1070b–1, 1070g, 1087dd, 1087hh; 42 U.S.C. 2753)

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 24. The authority citation for part 674 is revised to read as follows:

Authority: 20 U.S.C. 421–429, 1070g, 1087aa–1087hh, unless otherwise noted.

■ 25. Section 674.2 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, the terms ''Teacher Education Assistance for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant''.
■ B. Revising the authority citation to read as follows:

§ 674.2 Definitions.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094)

■ 26. Section 674.61 is amended by:
■ A. In paragraph (b)(2)(ii), adding the words ''a new TEACH Grant or'' immediately after the words ''does not receive''.
■ B. Revising the authority citation to read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(Authority: 20 U.S.C. 425, 1070g, 1087dd; sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94–482)

PART 675—FEDERAL WORK-STUDY PROGRAMS

■ 27. The authority citation for part 675 is revised to read as follows:

Authority: 20 U.S.C. 1070g; 42 U.S.C. 2751–2756b; unless otherwise noted.

■ 28. Section 675.2 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, the terms ''Teacher Education Assistance for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant''.
■ B. Revising the authority citation to read as follows:

§ 675.2 Definitions.

* * * * *

(Authority: 20 U.S.C. 1070g, 1087aa–1087ii)

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

■ 29. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, 1070g, unless otherwise noted.

■ 30. Section 676.2 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, the terms ''Teacher Education Assistance for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant''.
■ B. Revising the authority citation to read as follows:

§ 676.2 Definitions.

* * * * *

(Authority: 20 U.S.C. 1070g, 1087aa–1087ii)

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 31. The authority citation for part 682 is revised to read as follows:

Authority: 20 U.S.C 1070g, 1071 to 1087–2, unless otherwise noted.

■ 32. Section 682.200 is amended by:
■ A. In paragraph (a)(1), adding, in alphabetical order, the terms ''Teacher Education Assistance for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant''.
■ B. In paragraph (b), in paragraph (2) of the definition of ''Estimated financial assistance,'' adding the words ''TEACH Grant,'' after the words ''the amounts of any'' and removing the word ''loan'' immediately following the words ''if the sum of the''.

■ 33. Section 682.204 is amended by:
■ A. In paragraph (c), adding before the ''.'' the following words '', except that any TEACH Grants that have been converted to Federal Direct Unsubsidized Loans are not counted against annual or any aggregate loan limits under this section.''
■ B. Adding an authority citation to read as follows:

§ 682.204 Maximum loan amounts.

* * * * *

(Authority: 20 U.S.C. 1070g, 1078, 1078–2, 1078–3, 1078–8)

§ 682.215 [Amended]

■ 34. Section 682.215(c)(7)(ii) is amended by removing the citation ''(19 U.S.C. 2654)'' and adding in its place, the citation ''(29 U.S.C. 2601, *et seq.*)''.

■ 35. Section 682.402 is amended by:
■ A. In paragraph (c)(1)(ii)(B), adding the words ''a new TEACH Grant or'' immediately after the words ''does not receive''.
■ B. Revising the authority citation to read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(Authority: 20 U.S.C. 1070g, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087)

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 36. The authority citation for part 685 is revised to read as follows:

Authority: 20 U.S.C 1070g, 1087a, *et seq.* , unless otherwise noted.

■ 37. Section 685.102 is amended by:
■ A. In paragraph (a)(1), adding, in alphabetical order, the terms ''Teacher Education Assistance for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant''.
■ B. In paragraph (b), in paragraph (2)(i) of the definition of ''Estimated financial assistance,'' adding the words ''TEACH Grant,'' after the words ''the amounts of any'' and removing the word ''loan'' immediately following the words ''if the sum of the''.
■ C. Revising the authority citation to read as follows:

§ 685.102 Definitions.

* * * * *

(Authority: 20 U.S.C. 1070g, 1087a, *et seq.*)

■ 38. Section 685.203 is amended by:

■ A. In paragraph (b), adding before the ''.'' the words '', except that any TEACH Grants that have been converted to Federal Direct Unsubsidized Loans are not counted against annual or any aggregate loan limits under this section''.
■ B. Revising the authority citation to read as follows:

§ 685.203 Loan limits.

* * * * *

(Authority: 20 U.S.C. 1070g, 1087a, *et seq.*)

■ 39. Section 685.213 is amended by:
■ A. In paragraph (c)(2), adding the words ''a new TEACH Grant or'' immediately after the words ''does not receive''.
■ B. Revising the authority citation to read as follows:

§ 685.213 Total and permanent disability discharge.

* * * * *

(Authority: 20 U.S.C. 1070g, 1087a, *et seq.*)

§ 685.217 [Amended]

■ 40. Section 685.217(c)(7)(ii) is amended by removing the citation ''(19 U.S.C. 2654)'' and adding, in its place, the citation ''(29 U.S.C. 2601, *et seq.*)''.

■ 41. A new part 686 is added to read as follows:

Subpart A—Scope, Purpose and General Definitions

Sec.
686.1 Scope and purpose.
686.2 Definitions.
686.3 Duration of student eligibility.
686.4 Institutional participation.
686.5 Enrollment status for students taking regular and correspondence courses.
686.6 Payment from more than one institution.

Subpart B—Application Procedures

686.10 Application.
686.11 Eligibility to receive a grant.
686.12 Agreement to serve.

Subpart C—Determination of Awards

686.20 Submission process and deadline for a SAR or ISIR.
686.21 Calculation of a grant.
686.22 Calculation of a grant for a payment period.
686.23 Calculation of a grant for a payment period that occurs in two award years.
686.24 Transfer student: attendance at more than one institution during an award year.
686.25 Correspondence study.

Subpart D—Administration of Grant Payments

686.30 Scope.
686.31 Determination of eligibility for payment and cancellation of a TEACH Grant.
686.32 Counseling requirements.
686.33 Frequency of payment.
686.34 Liability for and recovery of TEACH Grant overpayments.
686.35 Recalculation of TEACH Grant award amounts.
686.36 Fiscal control and fund accounting procedures.
686.37 Institutional reporting requirements.
686.38 Maintenance and retention of records.

Subpart E—Service and Repayment Obligations

686.40 Documenting the service obligation.
686.41 Periods of suspension.
686.42 Discharge of agreement to serve.
686.43 Obligation to repay the grant.

Authority: 20 U.S.C. 1070g, *et seq.* , unless otherwise noted.

Subpart A—Scope, Purpose, and General Definitions

§ 686.1 Scope and purpose.

The TEACH Grant program awards grants to students who intend to teach, to help meet the cost of their postsecondary education. In exchange for the grant, the student must agree to serve as a full-time teacher in a high-need field, in a school serving low-income students for at least four academic years within eight years of completing the program of study for which the student received the grant. If the student does not satisfy the service obligation, the amounts of the TEACH Grants received are treated as a Federal Direct Unsubsidized Stafford Loan (Federal Direct Unsubsidized Loan) and must be repaid with interest.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.2 Definitions.

(a) Definitions for the following terms used in this part are in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, (HEA) 34 CFR part 600:

Award year
Clock hour
Correspondence course
Eligible institution
Institution of higher education (institution)
Regular student
Secretary
State
Title IV, HEA program

(b) Definitions for the following terms used in this part are in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Enrolled
Expected family contribution (EFC)
Full-time student
Graduate or professional student
Half-time student
HEA
Payment period
Three-quarter-time student
Undergraduate student
William D. Ford Federal Direct Loan (Direct Loan) Program

(c) Definitions for the following terms used in this part are in 34 CFR part 77:

Local educational agency (LEA)
State educational agency (SEA)

(d) Other terms used in this part are defined as follows:

Academic year or its equivalent for elementary and secondary schools (elementary or secondary academic year):

(1) One complete school year, or two complete and consecutive half-years from different school years, excluding summer sessions, that generally fall within a 12-month period.

(2) If a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

Agreement to serve (ATS): An agreement under which the individual receiving a TEACH Grant commits to meet the service obligation described in § 686.12 and to comply with notification and other provisions of the agreement.

Annual award: The maximum TEACH Grant amount a student would receive for enrolling as a full-time, three-quarter-time, half-time, or less-than-half-time student and remaining in that enrollment status for a year.

Bilingual education: An educational program in which two languages are used to provide content matter instruction.

Elementary school: A nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

English language acquisition: The process of acquiring English as a second language.

Full-time teacher: A teacher who meets the standard used by a State in defining full-time employment as a teacher. For an individual teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

High-need field: Includes the following:

(1) Bilingual education and English language acquisition.
(2) Foreign language.
(3) Mathematics.
(4) Reading specialist.
(5) Science.
(6) Special education.
(7) Another field documented as high-need by the Federal Government, a State government or an LEA, and approved by the Secretary and listed in the Department's annual Teacher Shortage Area Nationwide Listing (Nationwide List) in accordance with 34 CFR 682.210(q).

Highly-qualified: Has the meaning set forth in section 9101(23) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) or in section 602(10) of the Individuals With Disabilities Education Act.

Institutional Student Information Record (ISIR): An electronic record that the Secretary transmits to an institution that includes an applicant's—

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC.

Numeric equivalent: (1) If an otherwise eligible program measures academic performance using an alternative to standard numeric grading procedures, the institution must develop and apply an equivalency policy with a numeric scale for purposes of establishing TEACH Grant eligibility. The institution's equivalency policy must be in writing and available to students upon request and must include clear differentiations of student performance to support a determination that a student has performed at a level commensurate with at least a 3.25 GPA on a 4.0 scale in that program.

(2) A grading policy that includes only ''satisfactory/unsatisfactory'', ''pass/fail'', or other similar nonnumeric assessments qualifies as a numeric equivalent only if—

(i) The institution demonstrates that the ''pass'' or ''satisfactory'' standard has the numeric equivalent of at least a 3.25 GPA on a 4.0 scale awarded in that program, or that a student's performance for tests and assignments yielded a numeric equivalent of a 3.25 GPA on a 4.0 scale; and

(ii) For an eligible institution, the institution's equivalency policy is consistent with any other standards the institution may have developed for academic and other title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance certifications, to the extent such standards distinguish among various levels of a student's academic performance.

Payment data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

Post-baccalaureate program: A program of instruction for individuals who have completed a baccalaureate degree, that—

(1) Does not lead to a graduate degree;

(2) Consists of courses required by a State in order for a student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary school or secondary school in that State, except that it does not include any program of instruction offered by a TEACH Grant-eligible institution that offers a baccalaureate degree in education; and

(3) Is treated as an undergraduate program of study for the purposes of title IV of the HEA.

Retiree: An individual who has decided to change his or her occupation for any reason and who has expertise, as determined by the institution, in a high-need field.

Scheduled Award: The maximum amount of a TEACH Grant that a full-time student could receive for a year.

School serving low-income students (low-income school): An elementary or secondary school that—

(1) Is in the school district of an LEA that is eligible for assistance pursuant to title I of the ESEA;

(2) Has been determined by the Secretary to be a school in which more than 30 percent of the school's total enrollment is made up of children who qualify for services provided under title I of the ESEA; and

(3) Is listed in the Department's Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits. The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) in the Department of the Interior or operated on Indian reservations by Indian tribal groups under contract or grant with the BIE to qualify as schools serving low-income students.

Secondary school: A nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

Student Aid Report (SAR): A report provided to an applicant by the Secretary showing the amount of his or her expected family contribution.

TEACH Grant-eligible institution: An eligible institution as defined in 34 CFR part 600 that meets financial responsibility standards established in 34 CFR part 668, subpart L, or that qualifies under an alternative standard in 34 CFR 668.175 and—

(1) Provides a high-quality teacher preparation program at the baccalaureate or master's degree level that—

(i)(A) Is accredited by a specialized accrediting agency recognized by the Secretary for the accreditation of professional teacher education programs; or

(B) Is approved by a State and includes a minimum of 10 weeks of full-time pre-service clinical experience, or its equivalent, and provides either pedagogical coursework or assistance in the provision of such coursework; and

(ii) Provides supervision and support services to teachers, or assists in the provision of services to teachers, such as—

(A) Identifying and making available information on effective teaching skills or strategies;

(B) Identifying and making available information on effective practices in the supervision and coaching of novice teachers; and

(C) Mentoring focused on developing effective teaching skills and strategies;

(2) Provides a two-year program that—

(i) Is acceptable for full credit in a baccalaureate teacher preparation program of study offered by an institution described in paragraph (1) of this definition, as demonstrated by the institutions; or

(ii) Is acceptable for full credit in a baccalaureate degree program in a high-need field at an institution described in paragraph (3) of this definition, as demonstrated by the institutions;

(3) Offers a baccalaureate degree that, in combination with other training or experience, will prepare an individual to teach in a high-need field as defined in this part and has entered into an agreement with an institution described in paragraphs (1) or (4) of this definition to provide courses necessary for its students to begin a career in teaching; or

(4) Provides a post-baccalaureate program of study.

TEACH Grant-eligible program: An eligible program, as defined in 34 CFR 668.8, is a program of study that is designed to prepare an individual to teach as a highly-qualified teacher in a high-need field and leads to a baccalaureate or master's degree, or is a post-baccalaureate program of study. A two-year program of study that is acceptable for full credit toward a baccalaureate degree is considered to be a program of study that leads to a baccalaureate degree.

Teacher: A person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including special education teachers and reading specialists.

Teacher preparation program: A State-approved course of study, the completion of which signifies that an enrollee has met all the State's educational or training requirements for initial certification or licensure to teach in the State's elementary or secondary schools. A teacher preparation program may be a regular program or an alternative route to certification, as defined by the State. For purposes of a TEACH Grant, the program must be provided by an institution of higher education.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.3 Duration of student eligibility.

(a) An undergraduate or post-baccalaureate student enrolled in a TEACH Grant-eligible program may receive the equivalent of up to four Scheduled Awards during the period required for the completion of the first undergraduate baccalaureate program of study and first post-baccalaureate program of study combined.

(b) A graduate student is eligible to receive the equivalent of up to two Scheduled Awards during the period required for the completion of a TEACH Grant-eligible master's degree program of study.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.4 Institutional participation.

(a) A TEACH Grant-eligible institution that offers one or more TEACH Grant-eligible programs may elect to participate in the TEACH Grant program.

(b) If an institution begins participation in the TEACH Grant program during an award year, a student enrolled at and attending that institution is eligible to receive a grant under this part for the payment period during which the institution begins participation and any subsequent payment period.

(c) If an institution ceases to participate in the TEACH Grant program or becomes ineligible to participate in the TEACH Grant program during an award year, a student who was attending the institution and who submitted a SAR with an official EFC to the institution, or for whom the institution obtained an ISIR with an official EFC, before the date the institution became ineligible will receive a TEACH Grant for that award year for—

(1) The payment periods that the student completed before the institution ceased participation or became ineligible to participate; and

(2) The payment period in which the institution ceased participation or became ineligible to participate.

(d) An institution that ceases to participate in the TEACH Grant program or becomes ineligible to participate in the TEACH Grant program must, within 45 days after the effective date of the loss of eligibility, provide to the Secretary—

(1) The name and other student identifiers as required by the Secretary of each eligible student under § 686.11 who, during the award year, submitted a SAR with an official EFC to the institution or for whom it obtained an ISIR with an official EFC before it ceased to participate in the TEACH Grant program or became ineligible to participate;

(2) The amount of funds paid to each student for that award year;

(3) The amount due each student eligible to receive a grant through the end of the payment period during which the institution ceased to participate in

the TEACH Grant program or became ineligible to participate; and

(4) An accounting of the TEACH Grant program expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.5 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an arrangement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work that—

(1) Applies toward a student's degree or post-baccalaureate program of study or is remedial work taken by the student to help in his or her TEACH Grant-eligible program;

(2) Is completed within the period of time required for regular coursework; and

(3) Does not exceed the amount of a student's regular coursework for the payment period for which enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular coursework is considered a less-than-half-time student.

(d) The following chart provides examples of the application of the regulations set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making half-time enrollment equal to six credits per term.

Under § 686.5	No. of credit hours regular work	No. of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c)*				Less-than-half-time.

* Any combination of regular and correspondence work that is greater than zero, but less than six hours.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.6 Payment from more than one institution.

A student may not receive grant payments under this part concurrently from more than one institution.

(Authority: 20 U.S.C. 1070g, *et seq.*)

Subpart B—Application Procedures

§ 686.10 Application.

(a) To receive a grant under this part, a student must—

(1) Complete and submit an approved signed application, as designated by the Secretary. A copy of this application is not acceptable;

(2) Complete and sign an agreement to serve and promise to repay; and

(3) Provide any additional information and assurances requested by the Secretary.

(b) The student must submit an application to the Secretary by—

(1) Sending the completed application to the Secretary; or

(2) Providing the application, signed by all appropriate family members, to the institution which the student attends or plans to attend so that the institution can transmit the application information to the Secretary electronically.

(c) The student must provide the address of his or her residence.

(d) For each award year, the Secretary, through publication in the **Federal Register**, establishes deadline dates for submitting to the Department the application and additional information and for making corrections to the information provided.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.11 Eligibility to receive a grant.

(a) *Undergraduate, post-baccalaureate, and graduate students.* (1) Except as provided in paragraph (b) of this section, a student who meets the requirements of 34 CFR part 668, subpart C, is eligible to receive a TEACH Grant if the student—

(i) Has submitted a completed application;

(ii) Has signed an agreement to serve as required under § 686.12;

(iii) Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program;

(iv) Is completing coursework and other requirements necessary to begin a career in teaching or plans to complete such coursework and requirements prior to graduating; and

(v) Has—

(A) If the student is in the first year of a program of undergraduate education as determined by the institution—

(*1*) A final cumulative secondary school grade point average (GPA) upon graduation of at least 3.25 on a 4.0 scale, or the numeric equivalent; or

(*2*) A cumulative GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, based on courses taken at the institution through the most-recently completed payment period;

(B) If the student is beyond the first year of a program of undergraduate education as determined by the institution, a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, through the most recently completed payment period;

(C) If the student is a graduate student during the first payment period, a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent;

(D) If the student is a graduate student beyond the first payment period, a

cumulative graduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, through the most-recently completed payment period; or

(E) A score above the 75th percentile of scores achieved by all students taking the test during the period the student took the test on at least one of the batteries from a nationally-normed standardized undergraduate, graduate, or post-baccalaureate admissions test, except that such test may not include a placement test.

(2)(i) An institution must document the student's secondary school GPA under § 686.11(a)(1)(v)(A) using—

(A) Documentation provided directly to the institution by the cognizant authority; or

(B) Documentation from the cognizant authority provided by the student.

(ii) A cognizant authority includes, but is not limited to—

(A) An LEA;

(B) An SEA or other State agency; or

(C) A public or private secondary school.

(iii) A home-schooled student's parent or guardian is the cognizant authority for purposes of providing the documentation of a home-schooled student's secondary school GPA.

(iv) If an institution has reason to believe the documentation provided by a student under paragraph (a)(2)(i)(B) of this section is inaccurate or incomplete, the institution must confirm the student's grades by using documentation provided directly to the institution by the cognizant authority.

(b) *Current or former teachers or retirees.* A student who has submitted a completed application and meets the requirements of 34 CFR part 668, subpart C, is eligible to receive a TEACH Grant if the student—

(1) Has signed an agreement to serve as required under § 686.12;

(2) Is a current teacher or retiree who is applying for a grant to obtain a master's degree or is or was a teacher who is pursuing certification through a high-quality alternative certification route; and

(3) Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program during the period required for the completion of a master's degree.

(c) *Transfer students.* If a student transfers from one institution to the current institution and does not qualify under § 686.11(a)(1)(v)(E), the current institution must determine that student's eligibility for a TEACH Grant for the first payment period using either the method described in paragraph (c)(1) of this section or the method described in paragraph (c)(2) of this section, whichever method coincides with the current institution's academic policy. For an eligible student who transfers to an institution that—

(1) Does not incorporate grades from coursework that it accepts on transfer into the student's GPA at the current institution, the current institution, for the courses accepted upon transfer—

(i) Must calculate the student's GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts; and

(ii) Must, for all subsequent payment periods, apply its academic policy and not incorporate the grades from the coursework that it accepts on transfer into the GPA at the current institution; or

(2) Incorporates grades from the coursework that it accepts on transfer into the student's GPA at the current institution, the current institution must use the grades assigned to the coursework accepted by the current institution as the student's cumulative GPA to determine eligibility for the first payment period of enrollment and all subsequent payment periods in accordance with its academic policy.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.12 Agreement to serve.

(a) *General.* A student who meets the eligibility requirements in § 686.11 may receive a TEACH Grant only after he or she signs an agreement to serve provided by the Secretary and receives counseling in accordance with § 686.32.

(b) *Contents of the agreement to serve.* The agreement provides that, for each TEACH Grant-eligible program for which the student received TEACH Grant funds, the grant recipient must fulfill a service obligation by performing creditable teaching service by—

(1) Serving as a full-time teacher for a total of not less than four elementary or secondary academic years within eight calendar years after completing the program or otherwise ceasing to be enrolled in the program for which the recipient received the TEACH Grant—

(i) In a low-income school;

(ii) As a highly-qualified teacher; and

(iii) In a high-need field in the majority of classes taught during each elementary and secondary academic year.

(2) Submitting, upon completion of each year of service, documentation of the service in the form of a certification by a chief administrative officer of the school; and

(3) Complying with the terms, conditions, and other requirements consistent with §§ 686.40–686.43 that the Secretary determines to be necessary.

(c) *Completion of more than one service obligation.*

(1) A grant recipient must complete a service obligation for each program of study for which he or she received TEACH Grants. Each service obligation begins following the completion or other cessation of enrollment by the student in the TEACH Grant-eligible program for which the student received TEACH Grant funds. However, creditable teaching service may apply to more than one service obligation.

(2) A grant recipient may request a suspension, in accordance with § 686.41, of the eight-year time period in paragraph (b)(1) of this section.

(d) *Majoring and serving in a high-need field.* A grant recipient who completes a TEACH Grant-eligible program in a field that is listed in the Nationwide List cannot satisfy his or her service obligation to teach in that high-need field unless the high-need field in which he or she has prepared to teach is listed in the Nationwide List for the State in which the grant recipient begins teaching at the time the recipient begins teaching in that field.

(e) *Repayment for failure to complete service obligation.* If a grant recipient fails or refuses to carry out the required service obligation described in paragraph (b) of this section, the TEACH Grants received by the recipient must be repaid and will be treated as a Federal Direct Unsubsidized Loan, with interest accruing from the date of each TEACH Grant disbursement, in accordance with applicable sections of subpart B of 34 CFR part 685.

(Authority: 20 U.S.C. 1070g, *et seq.*)

Subpart C—Determination of Awards

§ 686.20 Submission process and deadline for a SAR or ISIR.

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, an institution must disburse a TEACH Grant to a student who is eligible under § 686.11 and is otherwise qualified to receive that disbursement and electronically transmit disbursement data to the Secretary for that student if—

(i) The student submits a SAR with an official EFC to the institution; or

(ii) The institution obtains an ISIR with an official EFC for the student.

(2) In determining a student's eligibility to receive a grant under this part, an institution is entitled to assume that the SAR information or ISIR information is accurate and complete except under the conditions set forth in 34 CFR 668.16(f).

(b) *SAR or ISIR deadline.* Except as provided in 34 CFR 668.164(g), for a student to receive a grant under this part in an award year, the student must submit the relevant parts of the SAR with an official EFC to his or her institution or the institution must obtain an ISIR with an official EFC by the earlier of—

(1) The last date that the student is still enrolled and eligible for payment at that institution; or

(2) By the deadline date established by the Secretary through publication of a notice in the **Federal Register**.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.21 Calculation of a grant.

(a)(1)(i) The Scheduled Award for a TEACH Grant for an eligible student is $4,000.

(ii) Each Scheduled Award remains available to an eligible student until the $4,000 is disbursed.

(2)(i) The aggregate amount that a student may receive in TEACH Grants for undergraduate and post-baccalaureate study may not exceed $16,000.

(ii) The aggregate amount that a student may receive in TEACH Grants for a master's degree may not exceed $8,000.

(b) The annual award for—

(1) A full-time student is $4,000;

(2) A three-quarter-time student is $3,000;

(3) A half-time student is $2,000; and

(4) A less-than-half-time student is $1,000.

(c) Except as provided in paragraph (d) of this section, the amount of a student's grant under this part, in combination with the other student financial assistance available to the student, including the amount of a Federal Pell Grant for which the student is eligible, may not exceed the student's cost of attendance at the TEACH Grant-eligible institution. Other student financial assistance is estimated financial assistance, as defined in 34 CFR 673.5(c).

(d) A TEACH Grant may replace a student's EFC, but the amount of the grant that exceeds the student's EFC is considered estimated financial assistance, as defined in 34 CFR 673.5(c).

(e) In determining a student's payment for a payment period, an institution must include—

(1) In accordance with 34 CFR 668.20, any noncredit or reduced credit courses that an institution determines are necessary—

(i) To help a student be prepared for the pursuit of a first undergraduate baccalaureate or post-baccalaureate degree or certificate; or

(ii) In the case of English language instruction, to enable the student to utilize already existing knowledge, training, or skills; and

(2) In accordance with 34 CFR 668.5, a student's participation in a program of study abroad if it is approved for credit by the home institution at which the student is enrolled.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.22 Calculation of a grant for a payment period.

(a) *Eligibility for payment formula*—

(1) *Programs using standard terms with at least 30 weeks of instructional time.* A student's grant for a payment period is calculated under paragraph (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters; and

(C)(*1*) For an undergraduate student, requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; or

(*2*) For a graduate student, each term in the award year meets the minimum full-time enrollment status established by the institution for a semester, trimester, or quarter; and

(ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(*1*) The institution starts its terms for different cohorts of students on a periodic basis (*e.g.*, monthly);

(*2*) The program is offered exclusively in semesters, trimesters, or quarters; and

(*3*) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and reenroll in a subsequent term.

(2) *Programs using standard terms with less than 30 weeks of instructional time.* A student's payment for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C)(*1*) For an undergraduate student, requires the student to enroll in at least 12 credit hours in each term in the award year to qualify as a full-time student; or

(*2*) For a graduate student, each term in the award year meets the minimum full-time enrollment status established by the institution for a semester, trimester, or quarter; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(ii)(A) of this section.

(3) *Other programs using terms and credit hours.* A student's payment for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that—

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (2) of this section.

(4) *Programs not using terms or using clock hours.* A student's payment for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(5) *Programs for which an exception to the academic year definition has been granted under 34 CFR 668.3.* If an institution receives a waiver from the Secretary of the 30 weeks of instructional time requirement under 34 CFR 668.3, an institution may calculate a student's payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in—

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of meeting the requirements in paragraph (a)(1)(ii)(B) of this section, the program provides at least the same number of weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section as are in the program's academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e)

of this section if the program is offered in credit hours without terms.

(b) *Programs using standard terms with at least 30 weeks of instructional time.* The payment for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award; and

(3) Dividing the amount described in paragraph (b)(2) of this section by—

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year.

(c) *Programs using standard terms with less than 30 weeks of instructional time.* The payment for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award;

(3) Multiplying his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable:

(i) In a program using semesters or trimesters—

$$\frac{\text{The number of weeks of instructional time offered in } \textit{the program in the fall and spring semesters or trimesters}}{\text{The number of weeks in the program's academic year}}$$

(ii) In a program using quarters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters}}{\text{The number of weeks in the program's academic year}}$$

; and

(4)(i) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or

(ii) Dividing the student's annual award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (c)(2) of this section over more than two terms for programs using semesters or trimesters or more than three quarters for programs using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year definition.

(d) *Other programs using terms and credit hours.* The payment for a payment period, *i.e.*, an academic term, for a student in a program using terms and credit hours, other than those described in paragraph (a)(1) or (2) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award; and

(3) Multiplying his or her annual award determined under paragraph (d)(2) of this section by the following fraction:

$$\frac{\text{The number of weeks of instructional time in the term}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(e) *Programs using credit hours without terms or clock hours.* The payment for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by multiplying the Scheduled Award by the lesser of—

(1)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}}$$

; or

(2)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(f) *Maximum disbursement.* A single disbursement may not exceed 50 percent of an award determined under paragraph (d) or (e) of this section. If a payment for a payment period calculated under paragraph (d) or (e) of

this section would require the disbursement of more than 50 percent of a student's annual award in that payment period, the institution must make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student's annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program's academic year.

(g) *Minimum payment.* No payment for a payment period as determined under this section or § 686.25 may be less than $25.

(h) *Definition of academic year.* For purposes of this section and § 686.25, an institution must define an academic year—

(1) For each of its TEACH Grant-eligible undergraduate programs of study, including post-baccalaureate programs of study, in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.3; and

(2) For each of its TEACH Grant-eligible master's degree programs of study in terms of the number of weeks of instructional time in accordance with the requirements of 34 CFR 668.3 and the minimum number of credit or clock hours a full-time student would be expected to complete in the weeks of instructional time of the program's academic year.

(i) *Payment period completing a Scheduled Award.* In a payment period, if a student is completing a Scheduled Award, the student's payment for the payment period—

(1) Is calculated based on the total credit or clock hours and weeks of instructional time in the payment period; and

(2) Is the remaining amount of the Scheduled Award being completed plus an amount from the next Scheduled Award, if available, up to the payment for the payment period.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.23 Calculation of a grant for a payment period that occurs in two award years.

If a student enrolls in a payment period that is scheduled to occur in two award years—

(a) The entire payment period must be considered to occur within one award year;

(b) The institution must determine for each TEACH Grant recipient the award year in which the payment period will be placed subject to the restriction set forth in paragraph (c) of this section;

(c) The institution must place a payment period with more than six months scheduled to occur within one award year in that award year;

(d) If the institution places the payment period in the first award year, it must pay a student with funds from the first award year; and

(e) If the institution places the payment period in the second award year, it must pay a student with funds from the second award year.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.24 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a TEACH Grant at one institution subsequently enrolls at a second institution, the student may receive a grant at the second institution only if—

(1) The student submits a SAR with an official EFC to the second institution; or

(2) The second institution obtains an ISIR with an official EFC.

(b) The second institution must calculate the student's award in accordance with § 686.22 or 686.25.

(c) The second institution may pay a TEACH Grant only for that period in which a student is enrolled in a TEACH Grant-eligible program at that institution.

(d) The student's TEACH Grant for each payment period is calculated according to the procedures in § 686.22 or 686.25 unless the remaining balance of the Scheduled Award at the second institution is the balance of the student's last Scheduled Award and is less than the amount the student would normally receive for that payment period.

(e) A transfer student must repay any amount received in an award year that exceeds the amount which he or she was eligible to receive.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.25 Correspondence study.

(a) An institution calculates a TEACH Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

(1) Using the half-time annual award; and

(2) Multiplying the half-time annual award by the lesser of—

(i)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}}$$

; or

(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(b) For purposes of paragraph (a) of this section—

(1) An academic year as measured in credit or clock hours must consist of two payment periods—

(i) The first payment period must be the period of time in which the student completes the lesser of the first half of his or her academic year or program; and

(ii) The second payment period must be the period of time in which the student completes the lesser of the second half of the academic year or program; and

(2)(i) The institution must make the first payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(ii) The institution must make the second payment to a student for an

academic year, as calculated under paragraph (a) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;

(2)(i) If the student is enrolled in at least six credit hours that commence and are completed in that term, the half-time annual award is used; or

(ii) If the student is enrolled in less than six credit hours that commence and are completed in that term the less-than-half-time annual award is used;

(3) A payment for a payment period is calculated using the formula in § 686.22(d) except that paragraphs (c)(1) and (2) of this section are used in lieu of § 686.22(d)(1) and (2), respectively; and

(4) The institution must make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training must be calculated under § 686.22(d) if the residential training is offered using terms and credit hours or under § 686.22(e) if the residential training is offered using credit hours without terms or clock hours.

(Authority: 20 U.S.C. 1070g, *et seq.*)

Subpart D—Administration of Grant Payments

§ 686.30 Scope.

This subpart deals with TEACH Grant program administration by a TEACH Grant-eligible institution.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.31 Determination of eligibility for payment and cancellation of a TEACH Grant.

(a) For each payment period, an institution may pay a grant under this part to an eligible student only after it determines that the student—

(1) Is eligible under § 686.11;

(2) Has completed the relevant initial or subsequent counseling as required in § 686.32;

(3) Has signed an agreement to serve as described in § 686.12;

(4) Is enrolled in a TEACH Grant-eligible program; and

(5) If enrolled in a credit-hour program without terms or a clock-hour program, has completed the payment period, as defined in 34 CFR 668.4, for which he or she has been paid a grant.

(b)(1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but changes that determination before the end of the payment period, the institution may pay a TEACH Grant to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student enrolled in a TEACH Grant-eligible program is not maintaining the required GPA for a TEACH Grant under § 686.11 or is not pursuing a career in teaching, but changes that determination before the end of the payment period, the institution may pay a TEACH Grant to the student for the entire payment period.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress or the necessary GPA for a TEACH Grant under § 686.11 or is not pursuing a career in teaching, but changes that determination after the end of the payment period, the institution may not pay the student a TEACH Grant for that payment period or make adjustments in subsequent payments to compensate for the loss of aid for that period.

(d) An institution may make one disbursement for a payment period to an otherwise eligible student if—

(1)(i) The student's final high school GPA is not yet available; or

(ii) The student's cumulative GPA through the prior payment period under § 686.11 is not yet available; and

(2) The institution assumes liability for any overpayment if the student fails to meet the required GPA to qualify for the disbursement.

(e)(1) In accordance with 34 CFR 668.165, before disbursing a TEACH Grant for any award year, an institution must—

(i) Notify the student of the amount of TEACH Grant funds that the student is eligible to receive, how and when those funds will be disbursed, and the student's right to cancel all or a portion of the TEACH Grant; and

(ii) Return the TEACH Grant proceeds, cancel the TEACH Grant, or both, if the institution receives a TEACH Grant cancellation request from the student by the later of the first day of a payment period or 14 days after the date it notifies the student of his or her right to cancel all or a portion of a TEACH Grant.

(2)(i) If a student requests cancellation of a TEACH Grant after the period of time in paragraph (e)(1)(ii) of this section, but within 120 days of the TEACH Grant disbursement date, the institution may return the TEACH Grant proceeds, cancel the TEACH Grant, or do both.

(ii) If the institution does not return the TEACH Grant proceeds, or cancel the TEACH Grant, the institution must notify the student that he or she may contact the Secretary to request that the TEACH Grant be converted to a Federal Direct Unsubsidized Loan.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.32 Counseling requirements.

(a) *Initial counseling.* (1) An institution must ensure that initial counseling is conducted with each TEACH Grant recipient prior to making the first disbursement of the grant.

(2) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the student's questions. As an alternative, in the case of a student enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the student may be provided with written counseling materials before the grant is disbursed.

(3) The initial counseling must—

(i) Explain the terms and conditions of the TEACH Grant agreement to serve as described in § 686.12;

(ii) Provide the student with information about how to identify low-income schools and documented high-need fields;

(iii) Inform the grant recipient that, in order for the teaching to count towards the recipient's service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in § 686.2; or

(B) A high-need field listed in the Nationwide List at the time and for the State in which the grant recipient begins teaching in that field.

(iv) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the agreement to serve and the conditions under which a suspension may be granted in accordance with § 686.41;

(v) Explain to the student that conditions, such as conviction of a

felony, could preclude the student from completing the service obligation;

(vi) Emphasize to the student that if the student fails or refuses to complete the service obligation contained in the agreement to serve or any other condition of the agreement to serve—

(A) The TEACH Grant must be repaid as a Federal Direct Unsubsidized Loan; and

(B) The TEACH Grant recipient will be obligated to repay the full amount of each grant and the accrued interest from each disbursement date;

(vii) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan;

(viii) Emphasize that, once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan, it cannot be reconverted to a grant;

(ix) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office;

(x) Describe the likely consequences of loan default, including adverse credit reports, garnishment of wages, Federal offset, and litigation; and

(xi) Inform the student of sample monthly repayment amounts based on a range of student loan indebtedness.

(b) *Subsequent counseling.* (1) If a student receives more than one TEACH Grant, the institution must ensure that the student receives additional counseling prior to the first disbursement of each subsequent TEACH Grant award.

(2) Subsequent counseling may be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the student's questions. As an alternative, in the case of a student enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the student may be provided with written counseling materials before the grant is disbursed.

(3) Subsequent counseling must—

(i) Review the terms and conditions of the TEACH Grant agreement to serve as described in § 686.12;

(ii) Emphasize to the student that if the student fails or refuses to complete the service obligation contained in the agreement to serve or any other condition of the agreement to serve—

(A) The TEACH Grant must be repaid as a Federal Direct Unsubsidized Loan; and

(B) The TEACH Grant recipient will be obligated to repay the full amount of the grant and the accrued interest from the disbursement date;

(iii) Explain the circumstances, as described in § 686.34, under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan;

(iv) Emphasize that, once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan, it cannot be reconverted to a grant; and

(v) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office.

(c) *Exit counseling.* (1) An institution must ensure that exit counseling is conducted with each grant recipient before he or she ceases to attend the institution at a time determined by the institution.

(2) The exit counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the grant recipient's questions. As an alternative, in the case of a grant recipient enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the grant recipient may be provided with written counseling materials within 30 days after he or she completes the TEACH Grant-eligible program.

(3) Within 30 days of learning that a grant recipient has withdrawn from the institution without the institution's knowledge, or from a TEACH Grant-eligible program, or failed to complete exit counseling as required, exit counseling must be provided either in-person, through interactive electronic means, or by mailing written counseling materials to the grant recipient's last known address.

(4) The exit counseling must—

(i) Inform the grant recipient of the four-year service obligation that must be completed within the first eight calendar years after completing a TEACH Grant-eligible program in accordance with § 686.12;

(ii) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the service obligation and the conditions under which a suspension may be granted in accordance with § 686.41;

(iii) Provide the grant recipient with information about how to identify low-income schools and documented high-need fields;

(iv) Inform the grant recipient that, in order for the teaching to count towards the recipient's service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in § 686.2; or

(B) A high-need field listed in the Nationwide List at the time and for the State in which the grant recipient begins teaching in that field.

(v) Explain that the grant recipient will be required to submit to the Secretary each year written documentation of his or her status as a highly-qualified teacher in a high-need field at a low-income school or of his or her intent to complete the four-year service obligation until the date that the service obligation has been met or the date that the grant becomes a Federal Direct Unsubsidized Loan, whichever occurs first;

(vi) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan;

(vii) Emphasize that once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan it cannot be reconverted to a grant;

(viii) Inform the grant recipient of the average anticipated monthly repayment amount based on a range of student loan indebtedness if the TEACH Grants convert to a Federal Direct Unsubsidized Loan;

(ix) Review for the grant recipient available repayment options if the TEACH Grant converts to a Federal Direct Unsubsidized Loan, including the standard repayment, extended repayment, graduated repayment, income-contingent and income-based repayment plans, and loan consolidation;

(x) Suggest debt-management strategies to the grant recipient that would facilitate repayment if the TEACH Grant converts to a Federal Direct Unsubsidized Loan;

(xi) Explain to the grant recipient how to contact the Secretary;

(xii) Describe the likely consequences of loan default, including adverse credit reports, garnishment of wages, Federal offset, and litigation;

(xiii) Review for the grant recipient the conditions under which he or she may defer or forbear repayment, obtain a full or partial discharge, or receive teacher loan forgiveness if the TEACH Grant converts to a Federal Direct Unsubsidized Loan;

(xiv) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office; and

(xv) Inform the grant recipient of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(5) If exit counseling is conducted through interactive electronic means, an institution must take reasonable steps to ensure that each grant recipient receives the counseling materials and participates in and completes the exit counseling.

(d) *Compliance*. The institution must maintain documentation substantiating the institution's compliance with this section for each TEACH Grant recipient.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.33 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was eligible under § 686.11 within the award year as long as the student has signed the agreement to serve prior to disbursement of the TEACH Grant. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.34 Liability for and recovery of TEACH Grant overpayments.

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, a student is liable for any TEACH Grant overpayment made to him or her.

(2) The institution is liable for a TEACH Grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or in 34 CFR part 668. The institution must restore an amount equal to the overpayment to its TEACH Grant account.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a TEACH Grant overpayment if the amount of the overpayment is less than $25 and is not a remaining balance.

(b)(1) Except as provided in paragraph (a)(3) of this section, if an institution makes a TEACH Grant overpayment for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make the requested repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the TEACH Grant overpayment.

(2) If a student objects to the institution's TEACH Grant overpayment determination, the institution must consider any information provided by the student and determine whether the objection is warranted.

(c) Except as provided in paragraph (a)(3) of this section, if the student fails to repay a TEACH Grant overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the TEACH Grant overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution must refer the overpayment to the Secretary for collection in accordance with procedures required by the Secretary. After referring the TEACH Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.35 Recalculation of TEACH Grant award amounts.

(a) *Change in enrollment status*. (1) If the student's enrollment status changes from one academic term to another academic term within the same award year, the institution must recalculate the TEACH Grant award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. Any such recalculations must take into account any changes in the cost of attendance. In the case of an undergraduate or post-baccalaureate program of study, if such a policy is established, it must be the same policy that the institution established under 34 CFR 690.80(b) for the Federal Pell Grant Program and it must apply to all students in the TEACH Grant-eligible program.

(ii) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution must recalculate the student's enrollment status to reflect only those classes for which he or she actually began attendance.

(b) *Change in cost of attendance*. If the student's cost of attendance changes at any time during the award year and his or her enrollment status remains the same, the institution may, but is not required to, establish a policy under which the student's TEACH Grant award for the payment period is recalculated. If such a policy is established, it must apply to all students in the TEACH Grant-eligible program.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.36 Fiscal control and fund accounting procedures.

(a) An institution must follow the provisions for maintaining general fiscal records in this section and in 34 CFR 668.24(b).

(b) An institution must maintain funds received under this section in accordance with the requirements in 34 CFR 668.164.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.37 Institutional reporting requirements.

(a) An institution must provide to the Secretary information about each TEACH Grant recipient that includes but is not limited to—

(1) The student's eligibility for a TEACH Grant, as determined in accordance with §§ 686.11 and 686.31;

(2) The student's TEACH Grant amounts; and

(3) The anticipated and actual disbursement date or dates and disbursement amounts of the TEACH Grant funds.

(b) An institution must submit the initial disbursement record for a TEACH Grant to the Secretary no later than 30 days following the date of the initial disbursement. The institution must submit subsequent disbursement records, including adjustment and cancellation records, to the Secretary no later than 30 days following the date the disbursement, adjustment, or cancellation is made.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.38 Maintenance and retention of records.

(a) An institution must follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(Authority: 20 U.S.C. 1070g, *et seq.*)

Subpart E—Service and Repayment Obligations

§ 686.40 Documenting the service obligation.

(a) Except as provided in §§ 686.41 and 686.42, within 120 days of completing or otherwise ceasing enrollment in a program of study for which a TEACH Grant was received, the grant recipient must confirm to the Secretary in writing that—

(1) He or she is employed as a full-time teacher in accordance with the terms and conditions of the agreement to serve described in § 686.12; or

(2) He or she is not yet employed as a full-time teacher but intends to meet the terms and conditions of the agreement to serve described in § 686.12.

(b) If a grant recipient is performing full-time teaching service in accordance with the agreement to serve, or agreements to serve if more than one agreement exists, the grant recipient must, upon completion of each of the four required elementary or secondary academic years of teaching service, provide to the Secretary documentation of that teaching service on a form approved by the Secretary and certified by the chief administrative officer of the school in which the grant recipient is teaching. The documentation must show that the grant recipient is teaching in a low-income school. If the school at which the grant recipient is employed meets the requirements of a low-income school in the first year of the grant recipient's four elementary or secondary academic years of teaching and the school fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that recipient.

(c)(1) In addition to the documentation requirements in paragraph (b) of this section, the documentation must show that the grant recipient—

(i) Taught a majority of classes during the period being certified in any of the high-need fields of mathematics, science, a foreign language, bilingual education, English language acquisition, special education, or as a reading specialist; or

(ii) Taught a majority of classes during the period being certified in a State in another high-need field designated by that State and listed in the Nationwide List, except that teaching service does not satisfy the requirements of the agreement to serve if that teaching service is in a geographic region of a State or in a specific grade level not associated with a high-need field of a State designated in the Nationwide List as having a shortage of elementary or secondary school teachers.

(2) If a grant recipient begins qualified full-time teaching service in a State in a high-need field designated by that State and listed in the Nationwide List and in subsequent years that high-need field is no longer designated by the State in the Nationwide List, the grant recipient will be considered to continue to perform qualified full-time teaching service in a high-need field of that State and to continue to fulfill the service obligation.

(d) Documentation must also provide evidence that the grant recipient is a highly-qualified teacher.

(e) For purposes of completing the service obligation, the elementary or secondary academic year may be counted as one of the grant recipient's four complete elementary or secondary academic years if the grant recipient completes at least one-half of the elementary or secondary academic year and the grant recipient's school employer considers the grant recipient to have fulfilled his or her contract requirements for the elementary or secondary academic year for the purposes of salary increases, tenure, and retirement if the grant recipient is unable to complete an elementary or secondary academic year due to—

(1) A condition that is a qualifying reason for leave under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2612(a)(1) and (3)); or

(2) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), under a call to active service in connection with a war, military operation, or a national emergency.

(f) A grant recipient who taught in more than one qualifying school during an elementary or secondary academic year and demonstrates that the combined teaching service was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools involved, is considered to have completed one elementary or secondary academic year of qualifying teaching.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.41 Periods of suspension.

(a)(1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds may request a suspension from the Secretary of the eight-year period for completion of the service obligation based on—

(i) Enrollment in a program of study for which the recipient would be eligible for a TEACH Grant or in a program of study that has been determined by a State to satisfy the requirements for certification or licensure to teach in the State's elementary or secondary schools;

(ii) A condition that is a qualifying reason for leave under the FMLA; or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), under a call to active service in connection with a war, military operation, or a national emergency.

(2) A grant recipient may receive a suspension described in paragraphs (a)(1)(i) and (ii) of this section in one-year increments that—

(i) Does not exceed a combined total of three years under both paragraphs (a)(1)(i) and (ii) of this section; or

(ii) Ends upon the completion of the military service in paragraph (a)(1)(iii) of this section.

(b) A grant recipient must apply for a suspension in writing on a form approved by the Secretary prior to being subject to any of the conditions under § 686.43(a)(1) through (a)(5) that would cause the TEACH Grant to convert to a Federal Direct Unsubsidized Loan.

(c) A grant recipient must provide the Secretary with documentation supporting the suspension request as well as current contact information including home address and telephone number.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.42 Discharge of agreement to serve.

(a) *Death.* If a grant recipient dies, the Secretary discharges the obligation to complete the agreement to serve based on an original or certified copy of the grant recipient's death certificate, an accurate and complete photocopy of the original or certified copy of the grant recipient's death certificate, or, on a case-by-case basis, reliable documentation acceptable to the Secretary.

(b) *Total and permanent disability.* (1) A grant recipient's agreement to serve is discharged if the recipient becomes totally and permanently disabled, as defined in 34 CFR 682.200(b), and the grant recipient applies for and satisfies the eligibility requirements for a total and permanent disability discharge in accordance with 34 CFR 685.213.

(2) The eight-year time period in which the grant recipient must complete the service obligation remains in effect during the conditional discharge period described in 34 CFR 685.213(c)(2) unless the grant recipient is eligible for a suspension based on a condition that is a qualifying reason for leave under the FMLA in accordance with § 686.41(a)(1)(ii)(D).

(3) Interest continues to accrue on each TEACH Grant disbursement unless

and until the TEACH Grant recipient's agreement to serve is discharged.

(4) If the grant recipient satisfies the criteria for a total and permanent disability discharge during and at the end of the three-year conditional discharge period, the Secretary discharges the grant recipient's service obligation.

(5) If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the grant recipient does not meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional discharge period and the grant recipient is once again subject to the terms of the agreement to serve.

(Authority: 20 U.S.C. 1070g, *et seq.*)

§ 686.43 Obligation to repay the grant.

(a) The TEACH Grant amounts disbursed to the recipient will be converted into a Federal Direct Unsubsidized Loan, with interest accruing from the date that each grant disbursement was made and be collected by the Secretary in accordance with the relevant provisions of subpart A of 34 CFR part 685 if—

(1) The grant recipient, regardless of enrollment status, requests that the TEACH Grant be converted into a Federal Direct Unsubsidized Loan because he or she has decided not to teach in a qualified school or field or for any other reason;

(2) Within 120 days of ceasing enrollment in the institution prior to completing the TEACH Grant-eligible program, the grant recipient has failed to notify the Secretary in accordance with § 686.40(a);

(3) Within one year of ceasing enrollment in the institution prior to completing the TEACH Grant-eligible program, the grant recipient has not—

(i) Been determined eligible for a suspension of the eight-year period for completion of the service obligation as provided in § 686.41;

(ii) Re-enrolled in a TEACH Grant-eligible program; or

(iii) Begun creditable teaching service as described in § 686.12(b);

(4) The grant recipient completes the course of study for which a TEACH Grant was received and does not actively confirm to the Secretary, at least annually, his or her intention to satisfy the agreement to serve; or

(5) The grant recipient has completed the TEACH Grant-eligible program but has failed to begin or maintain qualified employment within the timeframe that would allow that individual to complete the service obligation within the number of years required under § 686.12.

(b) A TEACH Grant that converts to a loan, and is treated as a Federal Direct Unsubsidized Loan, is not counted against the grant recipient's annual or any aggregate Stafford Loan limits.

(c) A grant recipient whose TEACH Grant has been converted to a Federal Direct Unsubsidized Loan—

(1) Enters a six-month grace period prior to entering repayment, and

(2) Is eligible for all of the benefits of the Direct Loan Program, including an in-school deferment.

(d) A TEACH Grant that is converted to a Federal Direct Unsubsidized Loan cannot be reconverted to a grant.

(Authority: 20 U.S.C. 1070g, *et seq.*)

PART 690—FEDERAL PELL GRANT PROGRAM

■ 42. The authority citation for part 690 is revised to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

■ 43. Section 690.2 is amended by:

■ A. In paragraph (b), adding, in alphabetical order, the terms ''Teacher Education Assistance for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant''.

■ B. Revising the authority citation to read as follows:

§ 690.2 Definitions.

* * * * *

(Authority: 20 U.S.C. 1070a, 1070g)

[FR Doc. E8–13587 Filed 6–20–08; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday,
June 23, 2008

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing Marine Mammals; U.S. Navy Training in the Hawaii Range Complex; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 080519680–8684–01]

RIN 0648–AW86

Taking and Importing Marine Mammals; U.S. Navy Training in the Hawaii Range Complex

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to training activities conducted within the Hawaii Range Complex (HRC) for the period of December 2008 through December 2013. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requesting information, suggestions, and comments on these proposed regulations.

DATES: Comments and information must be received no later than July 23, 2008.

ADDRESSES: You may submit comments, identified by 0648-AW86, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- Hand delivery or mailing of paper, disk, or CD-ROM comments should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

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

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted in writing to Michael Payne at the address above and to David Rostker, OMB, by e-mail at *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext. 166.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application may be obtained by writing to the address specified above (See **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. The Navy's Final Environmental Impact Statement (FEIS) for the Hawaii Range Complex was published on May 9, 2008, and may be viewed at *http://www.govsupport.us/hrc*. NMFS participated in the development of the Navy's FEIS as a cooperating agency under NEPA. Last, NMFS is preparing a Draft Environmental Assessment (EA) that analyzes the environmental effects of several different mitigation alternatives for the potential issuance of the proposed rule. The Draft EA will be posted on the following Web site as soon as it is complete: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

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

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The National Defense Authorization Act of 2004 (NDAA) (Public Law 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
>
> (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On June 25, 2007, NMFS received an application from the Navy requesting authorization for the take of 24 species of marine mammals incidental to upcoming Navy training activities to be conducted within the HRC, which covers 235,000 nm^2 around the Main Hawaiian Islands (see map on page 17 of the application), over the course of 5 years. These training activities are classified as military readiness activities. The Navy states that these training activities may incidentally take marine mammals present within the HRC by exposing them to sound from mid-frequency or high frequency active sonar (MFAS/HFAS) or to underwater detonations at levels that NMFS associates with the take of marine mammals. The Navy requests authorization to take individuals of 24 species of marine mammals by Level B Harassment. Further, though they do not anticipate it to occur, the Navy requests authorization to take, by injury or mortality, up to 10 individuals each of 10 species over the course of the 5-year period (bottlenose dolphin, *Kogia spp.*, melon-headed whale, pantropical spotted dolphin, pygmy killer whale, short-finned pilot whale, striped dolphin, and Cuvier's, Longman's, and Blainville's beaked whale).

Background of Navy Request

The Navy's mission is to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. Title 10, U.S. Code (U.S.C.) section 5062 directs the Chief of Naval Operations to train all naval forces for combat. The Chief of Naval Operations meets that direction, in part,

by conducting at-sea training exercises and ensuring naval forces have access to ranges, operating areas (OPAREAs) and airspace where they can develop and maintain skills for wartime missions and conduct research, development, test, and evaluation (RDT&E) of naval weapons systems.

The HRC, where the Navy has, for more than 40 years, routinely conducted training and major exercises in the waters around the Hawaiian Islands, is a critical part of the Navy's mission, especially as it relates to training, for several reasons. Centrally located in the Pacific Ocean between the west coast of the United States and the naval stations in the western Pacific, and surrounding the most isolated islands in the world, the HRC has the infrastructure (i.e., extensive existing range assets and training capabilities) to support a large number of forces in a location both remote and under U.S. control. The range surrounds the major homeport of Naval Station Pearl Harbor, enabling re-supply and repairs to submarines and surface ships alike. The isolation of the range offers an invaluable facility on which to conduct missile testing and training. Able to link with the U.S. Army's Pohakuloa Training Area, as well as U.S. Air Force and U.S. Marine Corps bases where aircraft basing and amphibious training may occur, the HRC provides a superior joint training environment for all the U.S. armed services and advanced missile testing capability. Among the important assets of the HRC is the Pacific Missile Range Facility (PMRF), which is the world's largest instrumented, multi-environment, military test range capable of supporting subsurface, surface, air, and space training, and RDT&E. It consists of instrumented underwater ranges, controlled airspace, and a temporary operating area covering 2.1 million square nautical miles (nm^2) of ocean area. The Navy must have the flexibility and capacity to quickly surge required combat power in the event of a national crisis or contingency operation. Because of its location, training for sustained deployment at the HRC, rather than at ranges on the west coast, saves 10 transit days to the western Pacific from the west coast of the United States.

The HRC complex consists of targets and instrumented areas, airspace, surface OPAREAS, and land range facilities. The Navy's proposed action includes conducting current and emerging training in the HRC. Although the Navy plans to conduct many different types of RDT&E on the land, in the air, and in the water, as well as implement infrastructure improvements (addressed comprehensively in the Navy's FEIS), this document specifically analyzes those activities in the HRC for which the Navy seeks MMPA incidental take authorization, i.e., those training activities that the Navy predicts would result in the generation of levels of sound in the water that NMFS has indicated are likely to result in the take of marine mammals (not counting SURTASS LFA sonar, for which the Navy has already obtained an MMPA authorization), either through the use of sonar (mid-frequency active sonar (MFAS) or high frequency active sonar (HFAS)) or from the use of live ordnance, including the detonation of explosives in the water. Table 1–1 in the Navy's application presents a summary of the training and RDT&E activities that will occur in the HRC and indicates the exercise types that the Navy's modeling indicated would likely result in the take of marine mammals.

Description of the Specified Activities

As mentioned above, the Navy has requested MMPA authorization to take marine mammals incidental to training activities in the HRC that would result in the generation of sound in the water, at or above levels that NMFS has determined will likely result in take (see Acoustic Take Criteria Section), either through the use of MFAS/HFAS or the detonation of explosives in the water.

Activities Utilizing Active Tactical Sonar Sources

For this operating area (HRC), the training activities that utilize active tactical sonar sources fall into the category of Anti-submarine Warfare (ASW) exercises. This section includes a description of the active acoustic devices used in ASW exercises, as well as the exercise types in which these acoustic sources are used.

Acoustic Sources Used for ASW Exercises in the HRC

Tactical military sonars are designed to search for, detect, localize, classify, and track submarines. There are two types of sonars, passive and active:

- Passive sonars only listen to incoming sounds and, since they do not emit sound energy in the water, lack the potential to acoustically affect the environment.
- Active sonars generate and emit acoustic energy specifically for the purpose of obtaining information concerning a distant object from the received and processed reflected sound energy.

Modern sonar technology includes a multitude of sonar sensor and processing systems. In concept, the simplest active sonars emit omni-directional pulses (''pings'') and time the arrival of the reflected echoes from the target object to determine range. More sophisticated active sonar emits an omni-directional ping and then rapidly scans a steered receiving beam to provide directional, as well as range, information. More advanced sonars transmit multiple preformed beams, listening to echoes from several directions simultaneously and providing efficient detection of both direction and range.

The tactical military sonars to be deployed during testing and training in the HRC are designed to detect submarines in tactical training scenarios. This task requires the use of the sonar mid-frequency range (1 kilohertz [kHz] to 10 kHz) predominantly, as well as one source in the high frequency range (above 10 kHz) that operates at a level high enough to be considered in the modeling. The high frequency source will contribute a comparatively very small amount to the total amount of active sonar that marine mammals will be exposed to during the Navy's proposed activities, however, for this document we will refer to the collective high and mid-frequency sonar sources as MFAS/HFAS. A narrative description of the types of acoustic sources used in ASW training exercises is included below. Table 1 (below) summarizes the nominal characteristics of the acoustic sources used in the modeling to predict take of marine mammals.

Sonar Type	Description of Sonar	Source Depth (m)	Center Freq (kHz)	Source Level (dB)	Spacing (m)*	Vertical Directivitiy	Horizontal Directivity	Units per Hour
MK-48	Torpedo	27	> 10	classified	144	Omni	Omni	one torpedo run
AN/SQS-53	Surface Ship	7	3.5	235	154	Omni	240° Forward	120 pings
AN/SQS-56	Surface Ship	7	7.5	225	154	Omni	30° Forward	120 pings
AN/SSQ-62	Sonobuoy	27	8	201	450	Omni	Omni	8 sonobuoys
AN/AQS-22	Helo Dipping	27	4.1	217	15	Omni	Omni	2 dips
AN/BQQ-10	Submarine	91	classified	classified	n/a	Omni	Omni	2 pings

Table 1. Parameters used for modeling the six sonar sources. Many of the actual parameters and capabilities of these sonars are classified. Parameters used for modeling were derived to be as representative as possible. When, however, there were a wide range of potential modeling values, a nominal parameter likely to result in the most impact was used so that the model would err towards overestimation.

*Spacing means distance between pings at the nominal speed

Surface Ship Sonars—A variety of surface ships participate in testing and training events. Some ships (e.g., aircraft carriers, amphibious assault ships) do not have any onboard active sonar systems, other than fathometers. Others, like guided missile cruisers, are equipped with active as well as passive tactical sonars for mine avoidance and submarine detection and tracking. Within Navy ASW exercises in the HRC, two types of hull-mounted sonar sources account for the majority of the estimated impacts to marine mammals. The AN/SQS–53 hull-mounted sonar, which has a nominal source level of 235 decibels (dB) re 1 μPa and transmits at center frequencies of 2.6 kHz and 3.3 kHz, is the Navy's most powerful sonar source used in ASW exercises in the HRC. The AN/SQS–56 hull-mounted sonar has a nominal source level of 225 dB re 1 μPa and transmits at a center frequency of 7.5 kHz. Sonar ping transmission durations were modeled as lasting 1 second per ping and omni-directional, which is a conservative assumption that may overestimate potential effects. Actual ping durations will be less than 1 second. Details concerning the tactical use of specific frequencies and the repetition rate for the sonar pings is classified but was modeled based on the required tactical training setting. The AN/SQS–53 and the AN/SQS–56 were modeled using the number of hours of predicted use (typically at two pings per minute; meaning an hour of sonar operation results in approximately 120 one-second pings). Based on modeling results, the Navy anticipates that the operation of these two sources will likely result in take of marine mammals (see Estimated Take of Marine Mammals Section).

Hull-mounted sonars occasionally operate in a mode called ''Kingfisher,'' which is designed to better detect smaller objects. The Kingfisher mode uses the same source level and frequency as normal search modes, however, it uses a different waveform (designed for small objects), a shorter pulse length (< 1 sec), a higher pulse repetition rate (due to the short ranges), and the ping is not omnidirectional, but directed forward. All Kingfisher use in the HRC (approximately 27 hours/year) was modeled as AN/SQS–53, though the less powerful AN/SQS–56 likely accounts for part of the total Kingfisher use as well.

Submarine Sonars—Submarine sonars (AN/BQQ–10, AN/BQQ–5, or AN/BSY–1) are used to detect and target enemy submarines and surface ships. Because they are trying to avoid being detected, a submarine's use of MFAS is generally rare, very brief, using minimal power, and may be narrowly focused. Modeling for the AN/BQQ–10 (all three submarine types were modeled as AN/BQQ–10, the most powerful submarine sonar source) assumes sonar use of two pings an hour (which is higher than typical), for one second each, at 235 dB re 1 μPa, and using an omni-directional transmission. The AN/BQQ–10 was modeled using the number of hours of predicted use (at two pings per hour). Based on modeling results, the Navy anticipates that the operation of this source may result in some take of marine mammals (see Estimated Take of Marine Mammals Section).

Aircraft Sonar Systems—Aircraft sonar systems that would operate in the HRC include sonobuoys (SSQ–62) and dipping sonar (AN/AQS–22). A sonobuoy is an expendable device, which may be deployed by maritime patrol aircraft or helicopters, used for the detection of underwater acoustic energy and for conducting vertical water column temperature measurements. Most sonobuoys are passive, but some, like the SSQ–62, can also generate active acoustic signals. The SSQ–62 has a nominal source level of 201 dB re 1 μPa and transmits at a center frequency of 8 kHz. Dipping sonar is an active or passive sonar device lowered on cable helicopters to detect or maintain contact with underwater targets. During ASW training, these systems active modes are only used briefly for localization of contacts and are not used in primary search capacity. The AN/AQS–22 has a nominal source level of 217 dB re 1 μPa and transmits at a center frequency of 4.1 kHz. Based on modeling results, the Navy anticipates that the operation of these two sources may result in some take of marine mammals (see Estimated Take of Marine Mammals Section).

Torpedoes—Torpedoes are the primary ASW weapon used by surface ships, aircraft, and submarines. The guidance systems of these weapons can be autonomous (acoustically based) or electronically controlled from the launching platform through an attached wire. They operate either passively, exploiting the emitted sound energy by the target, or actively, ensonifying the target and using the received echoes for guidance. We know that the MK–48 operates in the high frequency range (>10 kHZ), however, the nominal source level and the center frequency are classified. Based on modeling results, the Navy anticipates that the operation of this source may result in some take of marine mammals (see Estimated Take of Marine Mammals Section). In addition to the HFA sonar source used to guide the torpedo, the MK–48 is discussed in the ''Activities Utilizing Underwater Detonations'' Section.

Other Acoustic Sources—The Navy uses other acoustic sources in ASW exercises. However, based on operational characteristics (such as frequency and source level), the Navy determined that use of the following acoustic sources would not likely result in the take of marine mammals:

- Acoustic Device Countermeasures (ADC)—submarine simulators that make sound to act as decoys to avert localization and/or torpedo attacks.
- Training Targets—ASW training targets consisting of MK–30 and/or MK–39 Expendable Mobile ASW Training

Target (EMATT) are used to simulate opposition submarines. They are equipped with one or a combination of the following devices: (1) Acoustic projectors emanating sounds to simulate submarine acoustic signatures; (2) echo repeaters to simulate the characteristics of the echo of a particular sonar signal reflected from a specific type of submarine; and (3) magnetic sources to trigger magnetic detectors.

• Range pingers are active acoustic devices that allow inwater platforms on the range (e.g., submarines, target simulators, and exercise torpedoes) to be tracked by hydrophones on the seafloor such as those at the underwater instrumented range at PMRF. The range hydrophones are also tied in with transducer nodes that are capable of transmitting acoustic signals for a limited set of functions, including submarine warning signals, acoustic commands to submarine target simulators (acoustic command link), and occasional voice or data communications (received by participating ships and submarines on range).

Types of ASW Exercises in the HRC

ASW training conducted within the HRC involves the use of surface ships, submarines, aircraft, non-explosive and explosive exercise weapons, and other training-related devices. ASW training involves the use of active and passive acoustic devices with training activities occurring in both offshore (<12 nm (22 km) from shore) and open ocean (>12 nm (22 km) from shore) areas. A description of the different exercise types is provided below. Table 2 lists the types of ASW exercises and indicates the areas they are conducted in, the average duration of an exercise, the average number of exercises/per year, and the time of year they are conducted. Table 3, at the end of this section, indicates the total number of hours for each source type anticipated for each year for each exercise type.

Training Operation	Location Where Exercise May Be Conducted	Time of Year Conducted	Number of Training Events per/year	Average Length of Exercise (hrs)
Other ASW (TRACKEX/TORPEX)	Hawaii OpArea	Any time	32	13.5
RIMPAC	Hawaii OpArea	Summer Only	1 every other year	1 month (44 individual ASW ops from 2-24 hours long)
USWEX	Hawaii OpArea	Any time	5	3-4 days, including several 16-hr ASW ops
Multi Strike Group	Hawaii OpArea	Any time	0*	5 to 10 days including multiple 12-hr ASW ops

Table 2. Summary of locations, durations, and times of year of ASW exercises.
* If a Multiple Strike Group Exercise were planned for any given year, either other exercises (of a different type) would be cancelled to ensure that authorized take of marine mammals was not exceeded, or the Navy would seek separate MMPA authorization.

Anti-Submarine Warfare Tracking Exercise (ASW TRACKEX)—An ASW TRACKEX trains aircraft, ship, and submarine crews in tactics, techniques, and procedures for search, detection, and tracking of submarines. No torpedoes are fired during a TRACKEX. ASW TRACKEX includes ships, fixed wing aircraft, helicopters, torpedo targets, submarines, and weapons recovery boats and/or helicopters. As a unit-level exercise, an aircraft, ship, or submarine is typically used versus one target submarine or simulated target. TRACKEXs can include the use of hull-mounted sonar, submarines, or sonobuoys. No explosive ordnance is used in TRACKEX exercises.

The target may be non-evading while operating on a specified track or it may be fully evasive, depending on the state of training of the ASW unit. Duration of a TRACKEX is highly dependent on the tracking platform and its available on-station time. A maritime patrol aircraft can remain on station for eight hours, and typically conducts tracking exercises that last three to six hours. An ASW helicopter has a much shorter on-station time, and conducts a typical TRACKEX in one to two hours. Surface ships and submarines, which measure their on-station time in days, conduct tracking exercises exceeding eight hours and averaging up to 18 hours. For modeling purposes, TRACKEX and TORPEX (explained in next section) sonar hours are averaged, resulting in a sonar time of 13.5 hours.

ASW TRACKEX events are conducted on ranges within PMRF Warning Area W–188, the Hawaii Offshore Areas and/or the open ocean. Whenever aircraft use the ranges for ASW training, range clearance procedures include a detailed visual range search for marine mammals and unauthorized boats and planes by the aircraft releasing the inert torpedoes, range safety boats/aircraft, and range controllers. TRACKEXs can include the use of hull-mounted sonar, submarines, or sonobuoys, which can result in the take of marine mammals.

Anti-Submarine Warfare Torpedo Exercises (ASW TORPEX)—Anti-Submarine Warfare Torpedo Exercises (ASW TORPEX) train crews in tracking and attack of submerged targets, firing one or more Recoverable Exercise Torpedoes. TORPEX targets used in the Offshore Areas include submarines, MK–30 ASW training targets, and MK–39 Expendable Mobile ASW Training Targets. The target may be non-evading while operating on a specified track, or it may be fully evasive, depending on the training requirements. Submarines periodically conduct torpedo firing training exercises within the Hawaii Offshore OPAREA. Typical duration of a submarine TORPEX event is 22.7 hours, while air and surface ASW platform TORPEX events are considerably shorter. For modeling purposes, TRACKEX and TORPEX sonar hours are averaged resulting in a sonar time of 13.5 hours. TORPEXs can

include the use of hull-mounted sonar, submarines, sonobuoys, or MK–48 torpedoes (inert), which can result in the take of marine mammals.

Rim of the Pacific (RIMPAC)—RIMPAC is a multi-threat maritime exercise where submarines, surface ships, and aircraft from the U.S. and other countries conduct many different exercise events, including ASW against opposition submarine targets to improve coordination and interoperability of combined, bilateral and joint forces of participating nations. RIMPAC occurs during the summer over a 1-month period every other year (currently in even numbered years). Submarine targets include real submarines, targets that simulate the operations of an actual submarine including those described previously under TORPEX, and virtual submarines interjected into the training events by exercise controllers. ASW training events are complex and highly variable. For RIMPAC, the primary event involves a Surface Action Group (SAG), consisting of one to five surface ships equipped with sonar, with one or more helicopters, and a P–3 aircraft searching for one or more submarines. There will be approximately four to eight SAGs for a typical RIMPAC. For the purposes of analysis, each SAG event is counted as an ASW training activity. One or more ASW events may occur simultaneously within the HRC. There will be approximately 44 ASW training events during a typical RIMPAC, with an average event length of approximately 12 hours (ranging from 2–24 hours).

In addition to including potential training with of all of the acoustic sources mentioned previously, RIMPAC includes training events that involve underwater detonations (described in the next section: Activities Utilizing Underwater Detonations), including Sinking Exercise, Air-to-Surface Gunnery Exercise, Surface-to-Surface Gunnery Exercise, Naval Surface Fire Support, Air-to-Surface Missile Exercise, Surface-to-Surface Missile Exercise, Bombing Exercise, Mine Neutralization Exercise, and IEER/EER Exercise. Both the use of the acoustic sources as well as the underwater detonations could result in the take of marine mammals. These exercises involving underwater detonations do not overlap in space and time with sonar exercises. Explosives from RIMPAC have been included in the training events described in the next Section.

Undersea Warfare Exercise (USWEX)—Carrier Strike Groups (CSGs) and Expeditionary Strike Groups (ESGs) that deploy from the west coast of the United States will experience realistic submarine combat conditions and assess submarine warfare training capabilities postures in the HRC prior to their deployment to real world operations elsewhere. As a combined force, submarines, surface ships, and aircraft will conduct ASW against opposition submarine targets, which include real submarines, targets that simulate the operations of an actual submarine, and virtual submarines interjected into the training events by exercise controllers. USWEX training events are complex and highly variable. The primary event involves from one to five surface ships equipped with sonar, with one or more helicopters, and a P–3 aircraft searching for one or more submarines. A total of five exercises using MFAS/HFAS, lasting three to four days each, could occur throughout the year for USWEX.

In addition to the use of hull-mounted sonar (AN/SQS–53 and AN/SQS–56), submarine sonar, helicopter dipping sonar, and sonobuoys, USWEX includes training events that involve underwater detonations as described in the next section (Activities Utilizing Underwater Detonations), including Air-to-Surface Gunnery Exercise, Air-to-Surface Missile Exercise, and Bombing Exercise. Both the use of the acoustic sources as well as the underwater detonations could result in the take of marine mammals. These exercises utilizing underwater detonations do not overlap in space and time with sonar exercises. Explosives from USWEX have been included in the training events described in the next section.

Multiple Strike Group Exercise—A Multiple Strike Group Exercise consists of events that involve Navy assets engaging in a schedule of events battle scenario, with U.S. forces (blue forces) pitted against a notional opposition force (red force). Participants use and build upon previously gained training skill sets to maintain and improve the proficiency needed for a mission-capable, deployment-ready unit. The exercise would occur over a 5-day to 10-day period at any time during the year. As described above for USWEX, as a combined force, submarines, surface ships, and aircraft will conduct ASW against opposition submarine targets.

In addition to the use of hull-mounted sonar (AN/SQS–53 and AN/SQS–56), submarine sonar, helicopter dipping sonar, and sonobuoys , the Multiple Strike Group Exercise includes training events that involve underwater detonations as described in the next Section (Activities Utilizing Underwater Detonations), including Sinking Exercise, Air-to-Surface Missile Exercise, Mine Neutralization Exercise, and EER/IEER Exercise. Both the use of the acoustic sources as well as the underwater detonations could result in the take of marine mammals. These exercises utilizing underwater detonations do not overlap in space and time with sonar exercises. Explosives from the Multiple Strike Group Exercise have been included in the events described in the next Section.

	Hull-mounted AN/SQS-53 (hours)	Hull-mounted AN/SQS-56 (hours)	Dipping Sonar AN/AQS-22 (dips)	Sonobuoy AN/SSQ-62 (# buoys)	Torpedo MK-48 (runs)	Submarine AN/BQQ-10 (hours)
Other ASW (TRACKEX/TORPEX)	360 (~43200 pings)	75 (~9000 pings)	110	1278	309	200 (~400 pings)
RIMPAC	399	133	400	497	4	near zero*
USWEX	525	175	500	648	0	near zero*
Multi Strike Group	**	**	**	**	**	**
Total	**1284*** **	**383**	**1010**	**2423**	**313**	**200 (400 pings)**

Table 3. Total estimated use of sonar sources per year.

* Any submarine hours are few and would be included in the 200 hours under TORPEX/TRACKEX

** If a Multiple Strike Group Exercise were planned for any given year, either other exercises (of a different type) would be cancelled to ensure that the authorized take of marine mammals was not exceeded, or the Navy would seek separate MMPA authorization.

*** 27 of these hours are in kingfisher mode

Activities Utilizing Underwater Detonations

Underwater detonation activities can occur at various depths depending on the activity (sinking exercise [SINKEX] and mine neutralization), but may also include activities which may have detonations at or just below the surface (SINKEX, gunnery exercise [GUNEX], or missile exercise [MISSILEX]). When the weapons hit the target except for live torpedo shot, there is no explosion in the water, and so a ''hit'' is not modeled (i.e., the energy (either acoustic or pressure) from the hit is not expected to reach levels that would result in take of marine mammals). When a live weapon misses, it is modeled as exploding below the water surface at 1 ft (5-inch naval gunfire, 76mm rounds), 2 meters (Maverick, Harpoon, MK–82, MK–83, MK–84), or 50-ft (MK–48 torpedo) as shown in Appendix A of the Navy's application, Table A–7 (the depth is chosen to represent the worst case of the possible scenarios as related to potential marine mammals impacts). Exercises may utilize either live or inert ordnance of the types listed in Table 4. Additionally, successful hit rates are known to the Navy and are utilized in the effects modeling. Training events that involve explosives and underwater detonations occur throughout the year and are described below and summarized in Table 5 at the end of this section.

Ordnance	Net Explosive Weight for Modeling	Detonation Depth for Modeling
5" Naval gunfire	9.54 lbs	1 ft
76 mm Rounds	1.6 lbs	1 ft
Maverick	78.5 lbs	2 m
Harpoon	448 lbs	2 m
MK-82	238 lbs	2 m
MK-83	574 lbs	2 m
MK-84	945 lbs	2 m
MK-48	851 lbs	50 ft
Demolition Charges	20 lbs	Bottom
EER/IEER	5 lbs	20m

Table 4. Ordnance utilized in HRC Explosive exercises

Sinking Exercise (SINKEX)—In a SINKEX, a specially prepared, deactivated vessel is deliberately sunk using multiple weapons systems. The exercise provides training to ship and submarine and aircraft crews in delivering both live and inert ordnance on a real target. These target vessels are remediated to standards set by the Environmental Protection Agency. A SINKEX target is towed to sea and set adrift at the SINKEX location. The duration of a SINKEX is unpredictable since it ends when the target sinks, sometimes immediately after the first weapon impact and sometimes only after multiple impacts by a variety of weapons. Typically, the exercise lasts for four to eight hours over one to two days. SINKEXs typically occur only once or twice a year in the HRC.

Underwater detonation of several different explosive types could result in the take of marine mammals. Some or all of the following weapons may be employed in a SINKEX: Three HARPOON surface-to-surface and air-to-surface missiles; two to eight air-to-surface Maverick missiles; two to four MK–82 General Purpose Bombs; two Hellfire air-to-surface missiles; one SLAM-ER air-to-surface missile; two-hundred and fifty rounds for a 5-inch gun; and one MK–48 heavyweight submarine-launched torpedo.

Surface-to-Surface Gunnery Exercise (S-S GUNEX)—Surface gunnery exercises (GUNEX) take place in the open ocean to provide gunnery practice for Navy and Coast Guard ship crews. GUNEX training events conducted in the Offshore OPAREA involve stationary targets such as a MK–42 FAST or a MK–58 marker (smoke) buoy. The gun systems employed against surface targets include the 5-inch, 76 millimeter (mm), 25-mm chain gun, 20-mm Close-in Weapon System (CIWS), and .50 caliber machine gun. Typical ordnance expenditure for a single GUNEX is a minimum of 21 rounds of 5-inch or 76-mm ammunition, and approximately 150 rounds of 25-mm or .50-caliber ammunition. Both live and inert training rounds are used. After impacting the water, the rounds and fragments sink to the bottom of the ocean. A S-S GUNEX lasts approximately two to four hours, depending on target services and weather conditions. Detonation of the live 5-inch and 76-mm rounds could result in the take of marine mammals.

Naval Surface Fire Support Exercise—Navy surface combatants conduct fire support exercise (FIREX) training events at PMRF on a virtual range against ''Fake Island'', located on Barking Sands Tactical Underwater Range (BARSTUR). Fake Island is unique in that it is a virtual landmass simulated in three dimensions. Ships conducting FIREX training against targets on the island are given the coordinates and elevation of targets. PMRF is capable of tracking fired rounds to an accuracy of 30 feet (9.1 m). Detonation of the live 5-inch and 76-mm rounds fired into ocean during this exercise could result in the take of marine mammals.

Air-to-Surface Missile Exercise (A–S MISSILEX)—The A–S MISSILEX consists of the attacking platform releasing a forward-fired, guided weapon at the designated towed target. The exercise involves locating the target, then designating the target, usually with a laser.

A–S MISSILEX training can take place without the release of a live weapon if the attacking platform is carrying a captive air training missile (CATM) simulating the weapon involved in the training. The CATM MISSILEX is identical to a live-fire exercise in every aspect except that a weapon is not released, nor does it contain any explosives or propellant. The event requires a laser-safe range as the target is designated just as in a live-fire exercise.

From 1 to 16 aircraft, carrying live, inert, or CATMs, or flying without ordnance (dry runs) are used during the exercise. At sea, seaborne powered targets (SEPTARs), Improved Surface Towed Targets (ISTTs), and decommissioned hulks are used as targets. A–S MISSILEX assets include helicopters and/or one to 16 fixed wing aircraft with air-to-surface missiles and anti-radiation missiles (electromagnetic radiation source seeking missiles). When a high-speed anti-radiation missile (HARM) is used, the exercise is called a HARMEX. Targets include SEPTARs, ISTTs, and decommissioned ship hulks. Detonation of live ordnance could result in the take of marine mammals.

Surface-to-Surface Missile Exercise (S–S MISSILEX)—Surface-to-surface missile exercise (S–S MISSILEX) involves the attack of surface targets at sea by use of cruise missiles or other missile systems, usually by a single ship conducting training in the detection, classification, tracking and engagement of a surface target. Engagement is usually with Harpoon missiles or Standard missiles in the surface-to-surface mode. Targets could include virtual targets or the SEPTAR or ship deployed surface target. S–S MISSILEX training is routinely conducted on individual ships with embedded training devices. A S–S MISSILEX could include four to 20 surface-to-surface missiles, SEPTARs, a weapons recovery boat, and a helicopter for environmental and photo evaluation. All missiles are equipped with instrumentation packages or a warhead. Surface-to-air missiles can also be used in a surface-to-surface mode. S–S MISSILEX activities are conducted within PMRF Warning area W–188. Each exercise typically lasts five hours, though future S–S MISSILEXs could range from four to 35 hours. Missile detonation could result in the take of marine mammals.

Bombing Exercise (BOMBEX)—Fixed-wing aircraft conduct BOMBEX events against stationary targets (MK–42 FAST or MK–58 smoke buoy) at sea. An aircraft will clear the area, deploy a smoke buoy or other floating target, and then set up a racetrack pattern, dropping on the target with each pass. At PMRF, a range boat might be used to deploy the target for an aircraft to attack. A BOMBEX may involve either live or inert ordnance. Underwater detonation of live ordnance could result in the take of marine mammals.

Mine Neutralization—Mine Neutralization events involve the detection, identification, evaluation, rendering safe, and disposal of mines and unexploded ordnance (UXO) that constitutes a threat to ships or personnel. Mine neutralization training can be conducted by a variety of air, surface and subsurface assets. Tactics for neutralization of ground or bottom mines involve a diver placing a specific amount of explosives, which when detonated underwater at a specific distance from a mine results in neutralization of the mine. Floating, or moored, mines involve the diver placing a specific amount of explosives directly on the mine. Floating mines encountered by Fleet ships in open ocean areas will be detonated at the surface. Inert dummy mines are used in the exercises. The total net explosive weight used against each mine ranges from less than one pound to 20 pounds (0.5 to 9.1 kg). Mine neutralization training takes place offshore in Puuloa Underwater Range, Lima Landing, Naval Inactive Ship Maintenance Facility, MCBH, MCTAB, Barters Point Range, Ewa Training Minefield; and in open-ocean areas. Detonation of live ordnance could result in the take of marine mammals.

All demolition activities are conducted in accordance with current Navy directives and approved standard operating procedures. Before any explosive is detonated, divers are transported a safe distance away from the explosive. Standard practices for tethered mines in Hawaiian waters require ground mine explosive charges to be suspended 10 feet (3.0 m) below the surface of the water.

EER/IEER AN/SSQ–110A—The Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) Systems are air-launched ASW systems used in conducting ''large area'' searches for submarines. These systems are made up of airborne avionics ASW acoustic processing and sonobuoy types that are deployed in pairs. The IEER System's active sonobuoy component, the AN/SSQ–110A Sonobuoy, would generate a ''ping'' (small detonation) and the passive AN/SSQ–101 ADAR Sonobuoy would ''listen'' for the return echo of the sonar ping that has been bounced off the surface of a submarine. These sonobuoys are designed to provide underwater acoustic data necessary for naval aircrews to quickly

and accurately detect submerged submarines. The expendable and commandable sonobuoy pairs are dropped from a fixed-wing aircraft into the ocean in a predetermined pattern (array) with a few buoys covering a very large area. Upon command from the aircraft, the bottom payload is released to sink to a designated operating depth. A second command is required from the aircraft to cause the second payload to release and detonate generating a ''ping''. There is only one detonation in the pattern of buoys at a time. Detonation of the buoys could result in the take of marine mammals.

Air-to-Surface Gunnery Exercise (A–S GUNEX)—Air-to-Surface GUNEX events are conducted by rotary-wing aircraft against stationary targets (Floating at-sea Target [FAST] and smoke buoy). Rotary-wing aircraft involved in this training activity would include a single SH–60 using either 7.62-mm or .50-caliber door-mounted machine guns. A typical A–S GUNEX will last approximately one hour and involve the expenditure of approximately 400 rounds of 50-caliber or 7.62-mm ammunition. Due to the use of small, inert rounds, A–S GUNEXs are not expected to result in the take of marine mammals.

Training Operation	Explosive Sources	Locations Where Exercises May be Conducted	Time of Year Conducted	Number of Training Events per/year	Average Length of Exercise (hrs)	Number of Rounds per/year
Mine Neutralization	1 to 20-lb Demolition charge	Puuloa Underwater Range, Lima Landing, Naval Inactive Ship Maintenance Facility, MCBH, MCTAB, Barbers Point Range, Ewa Training Minefield	Any time	62	6	62
A-S MISSILEX	Penguin Maverick	Pacific Missile Range Facility (W-188)	Any time	36	5.5	36
S-S MISSILEX	Harpoon	Pacific Missile Range Facility (W-188)	Any time	7	5	7
BOMBEX	Mk82, Mk83, Mk84, Mk48	Hawaii OpArea	Any time	35	6	35
SINKEX	Multiple sources as described in narrative	Hawaii OpArea	Any time	6	14.5	3
S-S GUNNEX	5 inch round, 76-mm round	Warning Areas W-191, 192, 193, 194, 196, and Mela South	Any time	69	2 to 4	355
Naval Surface Fire Support	5 inch round, 76-mm round	Warning Area W-188	Any time	22	8.1	97
IEER	SSQ-110A Sonobuoy	Hawaii OpArea	Summer only	4	4 to 8	960

Table 5. Summary of the location, duration, time of year, and nature of the exercises involving underwater detonations

Additional information on the Navy's proposed activities may be found in the LOA Application and the FEIS (Section 2 and Appendices D, E, and J).

Description of Marine Mammals in the Area of the Specified Activities

There are 27 marine mammal species with possible or confirmed occurrence in the HRC. As indicated in Table 6, there are 25 cetacean species (7 mysticetes and 18 odontocetes) and two pinnipeds. Table 6 also includes the estimated abundance, estimated group size, and estimated probability of detection (based on Barlow 2006) of the species that occur in the HRC. Seven marine mammal species listed as federally endangered under the Endangered Species Act (ESA) occur in the HRC: the humpback whale, North Pacific right whale, sei whale, fin whale, blue whale, sperm whale, and Hawaiian monk seal. The most abundant marine mammals appear to be dwarf sperm whales, striped dolphins, and Fraser's dolphins. The most abundant large whales are sperm whales.

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Common Name	Scientific Name	Status	Occurs	Group Size*	Detection Probability[3]		Estimated Abundance in Hawaii
					Group 1-20	Group >20	
MYSTICETES (baleen whales)							
Family Balaenidae (right whales)							
North Pacific right whale	*Eubalaena japonica*	E	Rare				unknown
Family Balaenopteridae (rorquals)							
Humpback whale	*Megaptera novaeangliae*	E	Regular	1.7			4,491
Minke whale	*Balaenoptera acutorostrata*		Regular				unknown
Sei whale	*Balaenoptera borealis*	E	Rare	3.4	0.9	0.9	236
Fin whale	*Balaenoptera physalus*	E	Rare	2.6	0.9	0.9	236
Blue whale	*Balaenoptera musculus*	E	Rare				unknown
Bryde's whale	*Balaenoptera edeni/brydei*		Regular	1.5	0.9	0.9	469
ODONTOCETES (toothed whales)							
Family Physeteridae (sperm whale)							
Sperm whale	*Physeter macrocephalus*	E	Regular	7.3	0.87	0.87	6,919
Family Kogiidae (pygmy sperm whales)							
Pygmy sperm whale	*Kogia breviceps*		Regular	1	0.35	0.35	7,138
Dwarf sperm whale	*Kogia sima*		Regular	2.3	0.35	0.35	17,519
Family Ziphiidae (beaked whales)							
Cuvier's beaked whale	*Ziphius cavirostris*		Regular	2	0.23	0.23	15,242
Blainville's beaked whale	*Mesoplodon densirostris*		Regular	2.3	0.45	0.45	2,872
Longman's beaked whale	*Indopacetus pacificus*		Regular	17.8	0.76	1	1,007
Family Delphinidae (dolphins)							
Rough-toothed dolphin	*Steno bredanensis*		Regular	14.8	0.76	1	8,709
Bottlenose dolphin	*Tursiops truncatus*		Regular	9	0.76	1	3,215
Pantropical spotted dolphin	*Stenella attenuata*		Regular	60	0.76	1	8,978
Spinner dolphin	*Stenella longirostris*		Regular	31.7	0.76	1	3,351
Striped dolphin	*Stenella coeruleoalba*		Regular	37.3	0.76	1	13,143
Risso's dolphin	*Grampus griseus*		Regular	15.4	0.76	1	2,372
Melon-headed whale	*Peponocephala electra*		Regular	89.2	0.76	1	2,950
Fraser's dolphin	*Lagenodelphis hosei*		Rare	286.3	0.76	1	10,226
Pygmy killer whale	*Feresa attenuata*		Regular	14.4	0.76	1	956
False killer whale	*Pseudorca crassidens*		Regular	10.3	0.76	1	236
Killer whale	*Orcinus orca*		Regular	6.5	0.9	0.9	349
Short-finned pilot whale	*Globicephala macrorhynchus*		Regular	22.5	0.76	1	8,870
Total Number of Delphinids in Hawaiian Waters (from Barlow 2006)							63,354
Total Number of Beaked Whales in Hawaiian Waters (from Barlow 2006)							19,492
PINNIPEDS (seals, sea lions, walruses)							
Family Phocidae (true seals)							
Hawaiian monk seal	*Monachus schauinslandi*	E	Regular				1252****
Northern elephant seal	*Mirounga angustirostris*		Rare				

Table 6. Species of marine mammals known to occur in the HRC (E means endangered under the ESA).

Source: U.S. Department of the Navy, 2005a; Barlow, 2003; Mobley, 2004; Barlow, 2006; Carretta et al., 2006

*Mean group sizes are the geometric mean of best estimates from multiple observers and have not been corrected for bias.

**Estimated from Barlow 2006

***For analysis purposes (and in the absence of specific data), abundance and density for fin and sei whales were estimated to be the same as for false killer whales, which have similarly small numbers in the area.

****Estimated abundance in the Main Hawaiian Islands is 77 animals

The Navy has compiled information on the abundance, behavior, status and distribution, and vocalizations of marine mammal species in the Hawaiian waters from peer reviewed literature, the Navy Marine Resource Assessment, NMFS Stock Assessment Reports, and marine mammal surveys using acoustics or visual observations from aircraft or ships. This information may be viewed in the Navy's LOA application and/or the Navy's FEIS for the HRC (see Availability). Additional information is available in NMFS Stock Assessment Reports, which may be viewed at: *http://www.nmfs.noaa.gov/pr/sars/species.htm.*

Based on their rare occurrence in the HRC, the Navy and NMFS do not anticipate any effects to Blue whales, North Pacific right whales, or Northern elephant seals and, therefore, they are not addressed further in this document.

Important Reproductive Areas

Because the consideration of areas where marine mammals are known to selectively breed or calve are important to both the negligible impact finding necessary for the issuance of an MMPA authorization and the need for NMFS to put forth the means of effecting the least practicable adverse impact paying particular attention to rookeries, mating grounds, and other areas of similar significance, we are emphasizing important reproductive areas within this section. Little is known about the breeding and calving behaviors of many of the marine mammals that occur in the HRC. Some delphinid species have calving peaks once or twice a year, but give birth throughout their ranges. The mysticete species that may occur in the HRC are generally thought to migrate from higher to lower latitudes to breed and calve in the winter. With one notable exception, no breeding or calving areas have been identified in the HRC for the species that occur there. However, the main Hawaiian Islands constitute one of the world's most important habitats for the endangered humpback whale. Nearly two-thirds of the entire North Pacific population of humpback whales migrates to Hawaii each winter to engage in breeding, calving and nursing activities important for the survival of their species. The available sighting information and the known preferred breeding habitat (shallow water) indicates that humpback whale densities are much higher (up to almost four whales/square mile) in certain areas and that humpback mothers and calves are concentrated within the 200-m isobath. The Hawaiian Humpback Whale National Marine Sanctuary worked with Dr. Joe Mobley to compile a figure that generally illustrates humpback whale survey data collected between 1993 and 2003 and indicates areas of high and low density (Mobley 2004, Figure 1).

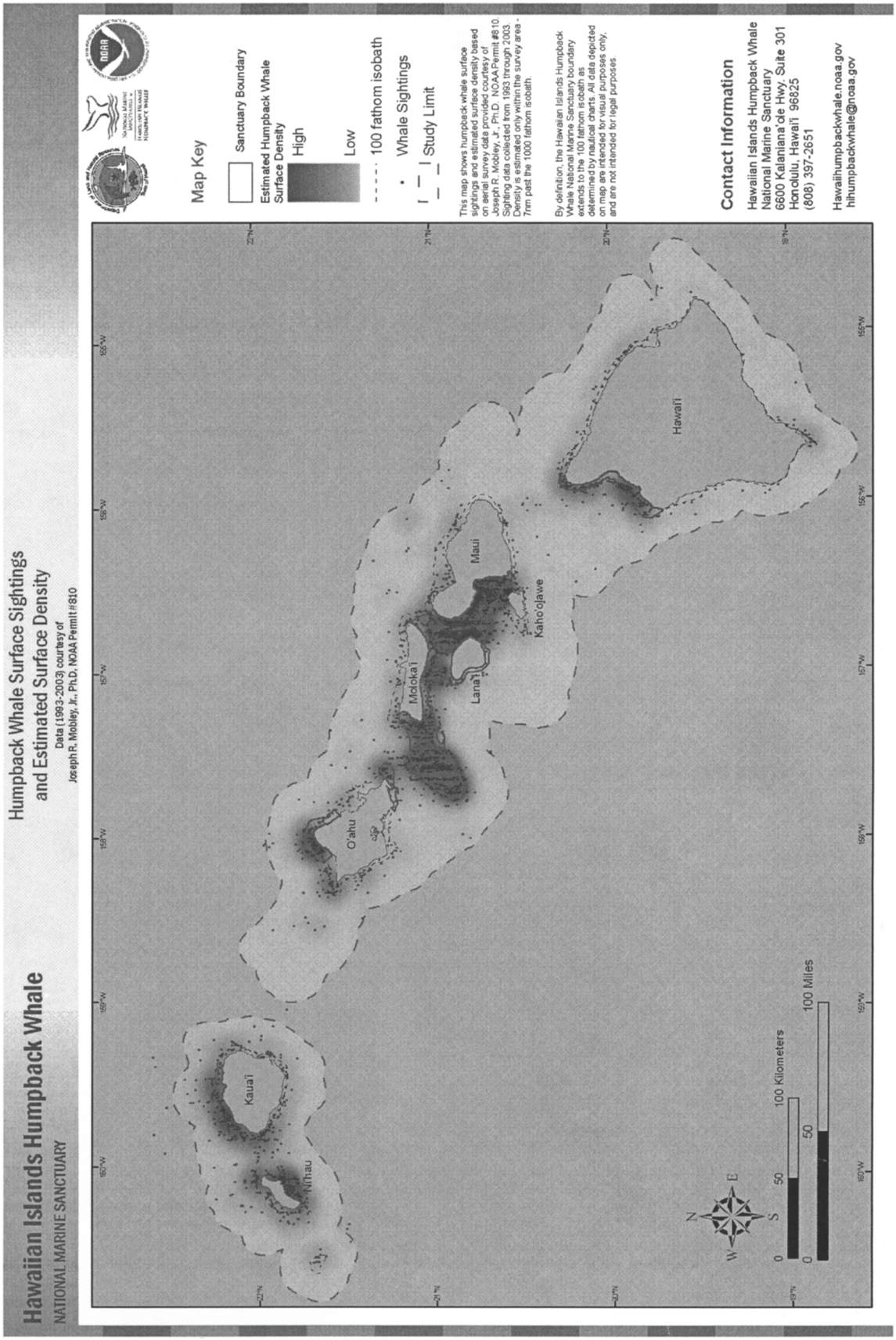

Figure 1. General illustration of areas of high humpback whale density based on survey data collected between 1993 and 2003 (Mobley 2004)

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A Brief Background on Sound

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. A summary is included below.

Sound is a wave of pressure variations propagating through a medium (for the sonar considered in this proposed rule, the medium is marine water). Pressure variations are created by compressing and relaxing the medium. Sound measurements can be expressed in two forms: intensity and pressure. Acoustic intensity is the average rate of energy transmitted through a unit area in a specified direction and is expressed in watts per square meter (W/m^2). Acoustic intensity is rarely measured directly, it is derived from ratios of pressures; the standard reference pressure for underwater sound is 1 microPascal (μPa); for airborne sound, the standard reference pressure is 20 μPa (Richardson *et al.*, 1995).

Acousticians have adopted a logarithmic scale for sound intensities, which is denoted in decibels (dB). Decibel measurements represent the ratio between a measured pressure value and a reference pressure value (in this case 1 μPa or, for airborne sound, 20 μPa). The logarithmic nature of the scale means that each 10 dB increase is a ten-fold increase in power (*e.g.*, 20 dB is a 100-fold increase, 30 dB is a 1,000-fold increase). Humans perceive a 10-dB increase in noise as a doubling of sound level, or a 10 dB decrease in noise as a halving of sound level. The term ''sound pressure level'' implies a decibel measure and a reference pressure that is used as the denominator of the ratio. Throughout this document, NMFS uses 1 microPascal (denoted re: 1 μPa) as a standard reference pressure unless noted otherwise.

It is important to note that decibels underwater and decibels in air are not the same and cannot be directly compared. To estimate a comparison between sound in air and underwater, because of the different densities of air and water and the different decibel standards (i.e., reference pressures) in water and air, a sound with the same intensity (i.e., power) in air and in water would be approximately 63 dB quieter in air. Thus a sound that is 160 dB loud underwater would have the same approximate effective intensity as a sound that is 97 dB loud in air.

Sound frequency is measured in cycles per second, or Hertz (abbreviated Hz), and is analogous to musical pitch; high-pitched sounds contain high frequencies and low-pitched sounds contain low frequencies. Natural sounds in the ocean span a huge range of frequencies: from earthquake noise at 5 Hz to harbor porpoise clicks at 150,000 Hz (150 kHz). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic and ultrasonic sounds, respectively. A single sound may be made up of many different frequencies together. Sounds made up of only a small range of frequencies are called ''narrowband'', and sounds with a broad range of frequencies are called ''broadband''; airguns are an example of a broadband sound source and tactical sonars are an example of a narrowband sound source.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' and estimate the lower and upper frequencies of functional hearing of the groups. Further, the frequency range in which each group's hearing is estimated as being most sensitive is represented in the flat part of the M-weighting functions developed for each group. More specific data is available for certain species (Table 17). The functional groups and the associated frequencies are indicated below:

- Low frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz.
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz.
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia*, the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz.
- Pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.
- Pinnipeds in Air: Functional hearing is estimated to occur between approximately 75 Hz and 30 kHz.

Because ears adapted to function underwater are physiologically different from human ears, comparisons using decibel measurements in air would still not be adequate to describe the effects of a sound on a whale. When sound travels away from its source, its loudness decreases as the distance traveled (propagates) by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound a kilometer distant. Acousticians often refer to the loudness of a sound at its source (typically measured one meter from the source) as the source level and the loudness of sound elsewhere as the received level. For example, a humpback whale three kilometers from an airgun that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound propagates. As a result, it is important not to confuse source levels and received levels when discussing the loudness of sound in the ocean.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

Metrics Used in This Document

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used in the discussions of acoustic effects in this document.

SPL

Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one

square meter. SPL is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa.

SPL (in dB) = 20 log (pressure/reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square. SPL does not take the duration of a sound into account. SPL is the applicable metric used in the risk continuum, which is used to estimate behavioral harassment takes (see Level B Harassment Risk Function (Behavioral Harassment) Section).

SEL

SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 $\mu Pa^2 s$.

SEL = SPL + 10log(duration in seconds)

As applied to tactical sonar, the SEL includes both the SPL of a sonar ping and the total duration. Longer duration pings and/or pings with higher SPLs will have a higher SEL. If an animal is exposed to multiple pings, the SEL in each individual ping is summed to calculate the total SEL. The total SEL depends on the SPL, duration, and number of pings received. The thresholds that NMFS uses to indicate at what received level the onset of temporary threshold shift (TTS) and permanent threshold shift (PTS) in hearing are likely to occur are expressed in SEL.

Potential Effects of Specified Activities on Marine Mammals

Exposure to MFAS/HFAS

The Navy has requested authorization for the take of marine mammals that may occur incidental to training activities in the HRC utilizing MFAS/HFAS or underwater explosives. The Navy has analyzed other Navy activities in the HRC, both ongoing and proposed, and in consultation with NMFS as a cooperating agency for the HRC EIS, has determined that take of marine mammals incidental to other Navy activities is unlikely and, therefore, has not requested authorization for take of marine mammals that might occur incidental to any other activities. Therefore, NMFS will analyze the potential effects on marine mammals from MFAS/HFAS and underwater detonations, but not from other activities.

For the purposes of MMPA authorizations, NMFS's effects assessments have three primary purposes: (1) To put forth the permissible methods of taking within the context of MMPA Level B Harassment (behavioral harassment), Level A Harassment (injury), and mortality (i.e., identify the number and types of take that will occur); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); and (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in the HRC, so this determination is inapplicable for the HRC).

More specifically, for activities involving active tactical sonar or underwater detonations, NMFS's analysis will identify the probability of lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance (that rises to the level of harassment), and social responses that would be classified as behavioral harassment or injury and/or would be likely to adversely affect the species or stock through effects on annual rates of recruitment or survival. In this section, we will focus qualitatively on the different ways that MFAS/HFAS and underwater explosive detonations may affect marine mammals (some of which NMFS would not classify as harassment). Then, in the Estimated Take of Marine Mammals Section, NMFS will relate the potential effects to marine mammals from MFAS/HFAS and underwater detonation of explosives to the MMPA regulatory definitions of Level A and Level B Harassment and attempt to quantify those effects.

In its April 14, 2008, Biological Opinion of the U.S. Navy's proposal to conduct four training exercises in the Cherry Point, Virginia Capes, and Jacksonville, Range Complexes NMFS presented a conceptual model of the potential responses of endangered and threatened species upon being exposed to active sonar and the pathways by which those responses might affect the fitness of individual animals that have been exposed, which may then affect the reproduction and/or survival of those individuals. Literature supporting the framework, with examples drawn from many taxa (both aquatic and terrestrial) was included in the ''Application of this Approach'' and ''Response Analyses'' sections of that document (available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*). This conceptual framework may also be used to describe the responses and pathways for non-endangered and non-threatened species and is included in this document for reference (Figure 2).

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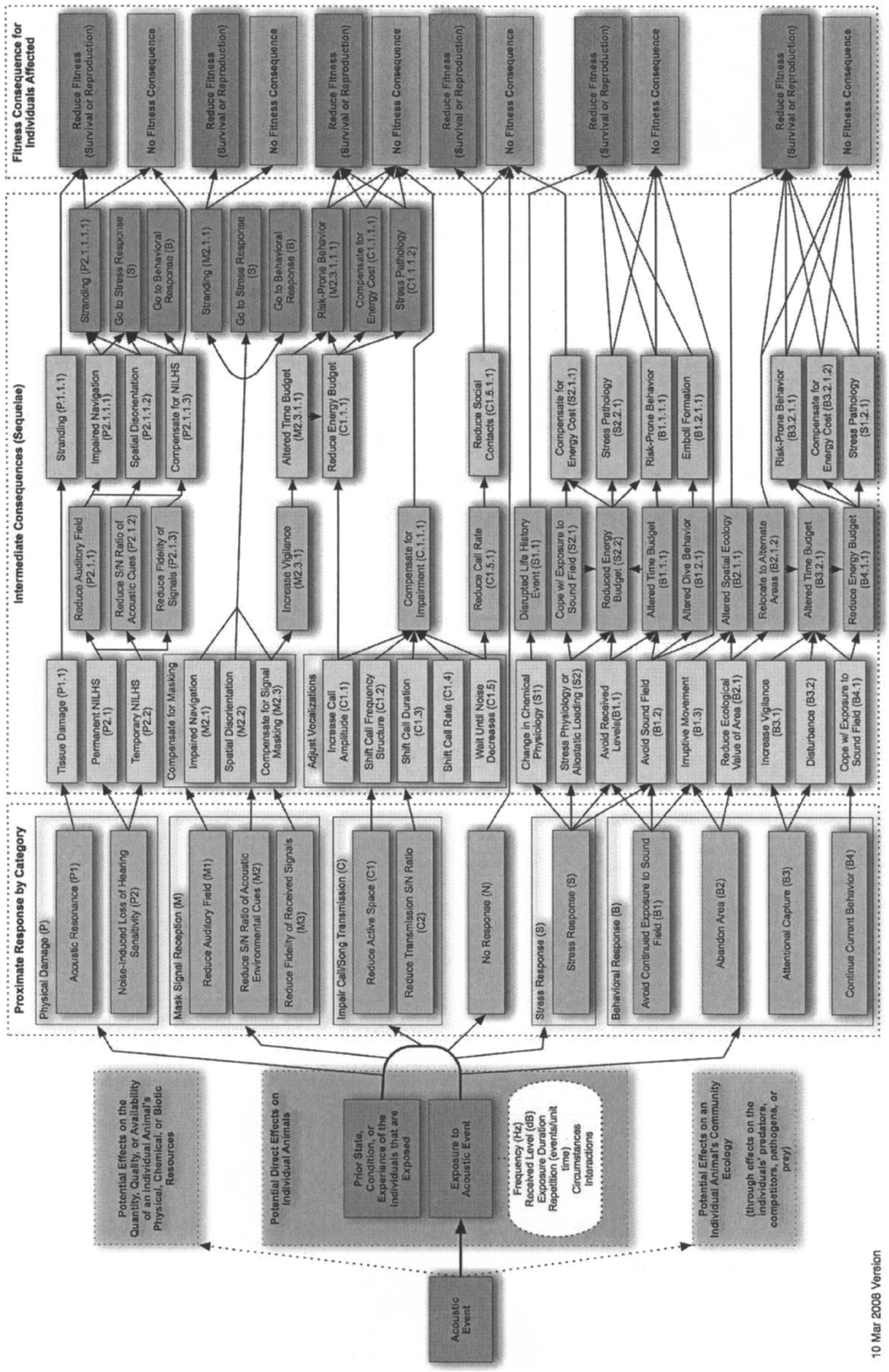

Figure 2. Conceptual model of the potential responses of endangered and threatened species upon being exposed to active sonar and the pathways by which those responses might affect the fitness of individual animals that have been exposed.

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Direct Physiological Effects

Based on the literature, there are two basic ways that MFAS/HFAS might directly result in physical trauma or damage: Noise-induced loss of hearing sensitivity (more commonly-called ''threshold shift'') and acoustically mediated bubble growth. Separately, an animal's behavioral reaction to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the Stranding section.

Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to recognize them) following exposure to a sufficiently intense sound, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is recovery), occurs in specific frequency ranges (i.e., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz)), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced by only 6 dB or reduced by 30 dB). PTS is permanent (i.e., there is no recovery), but also occurs in a specific frequency range and amount as mentioned.

The following physiological mechanisms are thought to play a role in inducing auditory TSs: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.*, 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS. For continuous sounds, exposures of equal energy (the same SEL) will lead to approximately equal effects. For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between exposures) (Kryter *et al.*, 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985) (although in the case of MFAS/HFAS, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS).

PTS is considered auditory injury (Southall *et al.*, 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS, however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.*, 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For cetaceans, published data are limited to the captive bottlenose dolphin and beluga (Finneran *et al.*, 2000, 2002b, 2005a; Schlundt *et al.*, 2000; Nachtigall *et al.*, 2003, 2004). For pinnipeds in water, data is limited to Kastak *et al.*'s measurement of TTS in one harbor seal, one elephant seal, and one California sea lion.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpreting environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (dB), duration, and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a long term condition. Of note, reduced hearing sensitivity as a simple function of development and aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost. There is no empirical evidence that exposure to MFAS/HFAS can cause PTS in any marine mammals; instead the probability of PTS has been inferred from studies of TTS (see Richardson *et al.* 1995).

Acoustically Mediated Bubble Growth

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.*, 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. Recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at sound exposure levels and tissue saturations levels that are improbable to occur in a diving marine mammal. However, an alternative but related hypothesis has also been suggested: Stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Yet

another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.*, 2003; Fernandez *et al.*, 2005). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Collectively, these hypotheses can be referred to as ''hypotheses of acoustically mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (i.e., rectified diffusion). More recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, Energy Levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002b). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.*, 2003), there is no conclusive evidence of this. However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005) concluded that in vivo bubble formation, which may be exacerbated by deep, long-duration, repetitive dives may explain why beaked whales appear to be particularly vulnerable to sonar exposures. Further investigation is needed to further assess the potential validity of these hypotheses. More information regarding hypotheses that attempt to explain how behavioral responses to MFAS/HFAS can lead to strandings is included in the Behaviorally Mediated Bubble Growth Section, after the summary of strandings.

Acoustic Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus decreases also. This principle is expected to apply to marine mammals as well because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995b) argued that the maximum radius of influence of an industrial noise (including broadband low frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (i.e., surf noise, prey noise, etc.; Richardson *et al.*, 1995).

The echolocation calls of toothed whales are subject to masking by high frequency sound. Human data indicate low frequency sound can mask high frequency sounds (i.e., upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (e.g., adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communication (Zaitseva *et al.,* 1980).

As mentioned previously, the functional hearing ranges of mysticetes, odontocetes, and pinnipeds all encompass the frequencies of the sonar sources used in the Navy's training exercises. Additionally, almost all species vocal repertoires span across the frequencies of the sonar sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. However, due to the pulse length and duty cycle of the MFAS/HFAS signal, masking is unlikely to occur as a result of exposure to MFAS/HFAS during the training exercises in the HRC.

Impaired Communication

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.*, 2004; Lohr *et al.*, 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which are more important than detecting a vocalization (Brenowitz, 1982; Brumm *et al.*, 2004; Dooling, 2004; Marten and Marler, 1977; Patricelli *et al.*, 2006). Most animals that vocalize have evolved with an ability to make vocal adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.*, 2004; Patricelli *et al.*, 2006). Vocalizing animals will make one or more of the following adjustments to their vocalizations: Adjust the frequency structure; Adjust the amplitude; Adjust temporal structure; or Adjust temporal delivery (see Biological Opinion).

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments remain unknown, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.*, 2006). For

example, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

Stress Responses

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.*, 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune response.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995) and altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000) and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.*, 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic function, which impairs those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to mid-frequency and low-frequency sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses cetaceans use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on cetaceans remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Exposure of marine mammals to sound sources can result in (but is not limited to) the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat

abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.*, 2007).

Many different variables can influence an animals perception of and response to (nature and magnitude) an acoustic event. An animals prior experience with a sound type effects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways) (Southall *et al.*, 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (i.e., calls of predators, prey, or conspecifics), and familiarity of the sound may effect the way an animal responds to the sound (Southall *et al.*, 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (i.e., proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

There are few empirical studies of avoidance responses of free-living cetaceans to mid-frequency sonars. Much more information is available on the avoidance responses of free-living cetaceans to other acoustic sources, like seismic airguns and low frequency sonar, than mid-frequency active sonar. Richardson *et al.*, (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals.

Behavioral Responses (Southall et al. (2007))

Southall *et al.*, (2007) reports the results of the efforts of a panel of experts in acoustic research from behavioral, physiological, and physical disciplines that convened and reviewed the available literature on marine mammal hearing and physiological and behavioral responses to man-made sound with the goal of proposing exposure criteria for certain effects. This compilation of literature is very valuable, though Southall *et al.* note that not all data is equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables—such data were reviewed and sometimes used for qualitative illustration, but were not included in the quantitative analysis for the criteria recommendations.

In the Southall *et al.,* (2007) report, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing critieria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. MFAS/HFAS sonar is considered a non-pulse sound. Southall *et al.,* (2007) summarize the reports associated with low and mid-frequency cetacean and pinniped responses to non-pulse sounds (there are no high frequency cetaceans in Hawaii) in Appendix C of their report (incorporated by reference and summarized in the three paragraphs below).

The reports that address responses of low frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to MFAS/HFAS) including: Vessel noise, drilling and machinery playback, low frequency M-sequences (sine wave with multiple phase reversals) playback, low frequency active sonar playback, drill ships, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These reports generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1 Pa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, though, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, though, few of the laboratory or field datasets had common conditions, behavioral contexts or sound sources, so it is not surprising that responses differ.

The reports that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: Pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), MFAS, and non-pulse bands and tones. Southall *et al.* were unable to come to a clear conclusion regarding these reports. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals responded at lower levels in the field).

The reports that address the responses of pinnipeds in water to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to MFAS/HFAS) including: AHDs, ATOC, various non-pulse sounds used in underwater data communication; underwater drilling, and construction noise. Few studies exist with enough information to include them in the analysis. The limited data suggested that exposures to non-pulse sounds between 90 and 140 dB generally do not result in strong behavioral responses in pinnipeds in water and no data exist at higher received levels.

In addition to summarizing the available data, the authors of Southall *et al.* (2007) developed a severity scaling system with the intent of ultimately being able to assign some level of biological significance to a response. Following is a summary of their scoring system, a comprehensive list of the behaviors associated with each score may be found in the report:

- 0–3 (Minor and/or brief behaviors) includes, but is not limited to: No response; minor changes in speed or locomotion (but with no avoidance); individual alert behavior; minor cessation in vocal behavior; minor changes in response to trained behaviors (in laboratory).
- 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival) includes, but is not limited to: Moderate changes in speed, direction, or dive profile; brief shift in group distribution; prolonged cessation or modification of vocal behavior (duration > duration of sound), minor or moderate individual and/or group avoidance of sound; brief cessation of reproductive behavior; or refusal to initiate trained tasks (in laboratory).
- 7–9 (Behaviors considered likely to affect the aforementioned vital rates) includes, but is not limited to: Extensive of prolonged aggressive behavior; moderate, prolonged or significant separation of females and dependent offspring with disruption of acoustic reunion mechanisms; long-term avoidance of an area; outright panic, stampede, stranding; threatening or attacking sound source (in laboratory).

In Table 7 we have summarized the scores that Southall *et al.* (2007) assigned to the papers that reported behavioral responses of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water to non-pulse sounds.

	Received RMS Sound Pressure Level (dB re: 1 μPa)											
Response Score	80 to < 90	90 to < 100	100 to < 110	110 to < 120	120 to < 130	130 to < 140	140 to < 150	150 to < 160	160 to < 170	170 to < 180	180 to < 190	190 to <200
9												
8		M	M		M		M				M	M
7						L	L					
6		L	L/P	L/M	L/M	L	L		M	M		
5					M							
4				L/M	L/M/P	P	L					
3		M	L/M	L/M	M/P	P						
2			L	L/M	L	L	L					
1			M	M	M							
0	L/P	L/P	L/M	L/M/P	L/M/P	L	M				M	M

Table 7. Data compiled from three tables from Southall et al. (2007) indicating when marine mammals (low-frequency cetaceans = L, mid-frequency cetaceans = M, and pinnipeds = P) were reported as having a behavioral response of the indicated severity to a non-pulse sound of the indicated received level. As discussed in the text, responses are highly variable and context specific.

Potential Effects of Behavioral Disturbance

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal (see Figure 2). There is little marine mammal data quantitatively relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or unconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.*, 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima,1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time: when animals focus their attention on specific environmental cues, they are not attending to other activities such a foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002).

Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (for example, multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (for example, when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. For example, bighorn sheep and Dall's sheep dedicated more time being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.*, 1991).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the body condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.*, 1996; Madsen, 1994; White, 1983). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46-percent reproductive success compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and has a 17 percent reproductive success. Similar reductions in reproductive success have been reported for mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.*, 1988), caribou disturbed by seismic exploration blasts (Bradshaw *et al.*, 1998), caribou disturbed by low-elevation military jet-fights (Luick *et al.*, 1996), and caribou disturbed by low-elevation jet flights (Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand). For example, a study of grizzly bears (*Ursus horribilis*) reported that bears disturbed by hikers reduced their energy intake by an average of 12 kcal/min (50.2 × 103kJ/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.* 1999).

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007).

Stranding and Mortality

When a live or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.*, 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; National Marine Fisheries Service, 2007p). The legal definition for a stranding within the United States is that ''a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.'' (16 U.S.C. 1421h).

Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most stranding are unknown (Geraci *et al.*, 1976; Eaton, 1979, Odell *et al.*, 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them the strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.*, 2003; Fair and Becker, 2000; Foley *et al.*, 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.*, 2004).

Several sources have published lists of mass stranding events of cetaceans during attempts to identify relationships between those stranding events and military sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.*, 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (2005) identified ten mass stranding events of Cuvier's beaked whales had been reported and one mass stranding of four Baird's beaked whales (*Berardius bairdii*). The IWC concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been associated with the use of mid-frequency sonar, one of those seven had been associated with the use of low-frequency sonar, and the remaining stranding event had been associated with the use of seismic airguns.

Most of the stranding events reviewed by the International Whaling Commission involved beaked whales. A mass stranding of Cuvier's beaked whales in the eastern Mediterranean Sea occurred in 1996 (Frantzis, 1998) and mass stranding events involving Gervais' beaked whales, Blainville's beaked whales, and Cuvier's beaked whales occurred off the coast of the Canary Islands in the late 1980s (Simmonds and Lopez-Jurado, 1991). The stranding events that occurred in the Canary Islands and Kyparissiakos Gulf in the late 1990s and the Bahamas in 2000 have been the most intensively-studied mass stranding events and have been associated with naval maneuvers that were using sonar.

Between 1960 and 2006, 48 strandings (68 percent) involved beaked whales, 3 (4 percent) involved dolphins, and 14 (20 percent) involved other whale species. Cuvier's beaked whales were involved in the greatest number of these events (48 or 68 percent), followed by sperm whales (7 or 10 percent), and Blainville's and Gervais' beaked whales (4 each or 6 percent). Naval activities that might have involved active sonar are reported to have coincided with 9 (13 percent) or 10 (14 percent) of those stranding events. Between the mid-1980s and 2003 (the period reported by the International Whaling Commission), we identified reports of 44 mass cetacean stranding events of which at least 7 were coincident with naval exercises that were using mid-frequency sonar.

Strandings Associated With MFAS

Over the past 12 years, there have been five stranding events coincident with military mid-frequency sonar use that are believed to most likely have been caused by exposure to the sonar: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006). In 2004, during the RIMPAC exercises, between 150–200 usually pelagic melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hours. NMFS determined that the mid-frequency sonar was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the Hanalei Bay stranding. A number of other stranding events coincident with the operation of mid-frequency sonar and resulting in the death of beaked whales or other species (Minke whales, dwarf sperm whales, pilot whales) have been reported; however, the majority have not been investigated to the degree necessary to determine the cause of the stranding.

Greece (1996)

Twelve Cuvier's beaked whales stranded atypically (in both time and space) along a 38.2-kilometer strand of the coast of the Kyparissiakos Gulf on May 12 and 13, 1996 (Frantzis, 1998). From May 11 through May 15, the NATO research vessel Alliance was conducting sonar tests with signals of 600 Hz and 3 kHz and rms SPL of 228 and 226 dB re: 1 μPa, respectively (D'Amico and Verboom, 1998; D'Spain *et al.*, 2006). The timing and the location of the testing encompassed the time and location of the whale strandings (Frantzis, 1998).

Necropsies of eight of the animals were performed, but were limited to basic external examination and sampling of stomach contents, blood, and skin. No ears or organs were collected, and no histological samples were preserved. No apparent abnormalities or wounds were found (Frantzis, 2004). Examination of photos of the animals revealed that the eyes of at least four of the individuals were bleeding. Photos were taken soon after their death (Frantzis, 2004). Stomach contents contained the flesh of cephalopods, indicating that feeding had recently taken place (Frantzis, 1998).

All available information regarding the conditions associated with this stranding was compiled, and many potential causes were examined including major pollution events, important tectonic activity, unusual physical or meteorological events,

magnetic anomalies, epizootics, and conventional military activities (International Council for the Exploration of the Sea, 2005a). However, none of these potential causes coincided in time with the mass stranding, or could explain its characteristics (International Council for the Exploration of the Sea, 2005a). The robust condition of the animals, plus the recent stomach contents, is not consistent with pathogenic causes (Frantzis, 2004). In addition, environmental causes can be ruled out as there were no unusual environmental circumstances or events before or during this time period (Frantzis, 2004).

It was determined that because of the rarity of this mass stranding of Cuvier's beaked whales in the Kyparissiakos Gulf (first one in history), the probability for the two events (the military exercises and the strandings) to coincide in time and location, while being independent of each other, was extremely low (Frantzis, 1998). However, because full necropsies had not been conducted, and no abnormalities were noted, the cause of the strandings could not be precisely determined (Cox *et al.*, 2006). The analysis of this stranding event provided support for, but no clear evidence for, the cause-and-effect relationship of sonar training activities and beaked whale strandings (Cox *et al.*, 2006).

Bahamas (2000)

NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hours of U.S. Navy ships using MFAS as they passed through the Northeast and Northwest Providence Channels on March 15–16, 2000. The ships, which operated both AN/SQS–53C and AN/SQS–56, moved through the channel while emitting sonar pings approximately every 24 seconds. Of the 17 cetaceans that stranded over a 36-hr period (Cuvier's beaked whales, Blainville's beaked whales, Minke whales, and a spotted dolphin), 7 animals died on the beach (5 Cuvier's beaked whales, 1 Blainville's beaked whale, and the spotted dolphin) and the other 10 were returned to the water alive (though their fate is unknown).

Necropsies were performed on five beaked whales. All five necropsied beaked whales were in good body condition, showing no signs of infection, disease, ship strike, blunt trauma, or fishery related injuries, and three still had food remains in their stomachs. Auditory structural damage was discovered in four of the whales, specifically bloody effusions or hemorrhaging around the ears. Bilateral intracochlear and unilateral temporal region subarachnoid hemorrhage with blood clots in the lateral ventricles were found in two of the whales. Three of the whales had small hemorrhages in their acoustic fats (located along the jaw and in the melon).

A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. Based on the way in which the strandings coincided with ongoing naval activity involving tactical mid-frequency sonar use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that mid-frequency sonars aboard U.S. Navy ships that were in use during the sonar exercise in question were the most plausible source of this acoustic or impulse trauma. This sound source was active in a complex environment that included the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy mid-frequency sonar and these contributory factors working together, and further recommended that the Navy avoid operating mid-frequency sonar in situations where these five factors would be likely to occur. This report does not conclude that all five of these factors must be present for a stranding to occur, nor that beaked whales are the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the presence of surface ducts, steep bathymetry, and/or constricted channels added to the operation of mid-frequency sonar in the presence of cetaceans (especially beaked whales and, potentially, deep divers) may increase the likelihood of producing a sound field with the potential to cause cetaceans to strand, and therefore, suggests the need for increased vigilance while operating MFAS/HFAS.

Madeira, Spain (2000)

From May 10–14, 2000, three Cuvier's beaked whales were found atypically stranded on two islands in the Madeira archipelago, Portugal (Cox *et al.*, 2006). A fourth animal was reported floating in the Madeiran waters by fisherman, but did not come ashore (Woods Hole Oceanographic Institution, 2005). Joint NATO amphibious training peacekeeping exercises involving participants from 17 countries and 80 warships took place in Portugal during May 2–15, 2000.

The bodies of the three stranded whales were examined post mortem (Woods Hole Oceanographic Institution, 2005), though only one of the stranded whales was fresh enough (24 hours after stranding) to be necropsied (Cox *et al.*, 2006). Results from the necropsy revealed evidence of hemorrhage and congestion in the right lung and both kidneys (Cox *et al.*, 2006). There was also evidence of intercochlear and intracranial hemorrhage similar to that which was observed in the whales that stranded in the Bahamas event (Cox *et al.*, 2006). There were no signs of blunt trauma, and no major fractures (Woods Hole Oceanographic Institution, 2005). The cranial sinuses and airways were found to be quite clear with little or no fluid deposition, which may indicate good preservation of tissues (Woods Hole Oceanographic Institution, 2005).

Several observations on the Madeira stranded beaked whales, such as the pattern of injury to the auditory system, are the same as those observed in the Bahamas strandings. Blood in and around the eyes, kidney lesions, pleural hemorrhages, and congestion in the lungs are particularly consistent with the pathologies from the whales stranded in the Bahamas, and are consistent with stress and pressure related trauma. The similarities in pathology and stranding patterns between these two events suggest that a similar pressure event may have precipitated or contributed to the strandings at both sites (Woods Hole Oceanographic Institution, 2005).

Even though no definitive causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): Exercises were conducted in areas of at least 547 fathoms (1000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1000–6000 m) occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships were operating around Madeira, though it is not known if MFA sonar was used, and the specifics of the sound sources used are unknown (Cox *et al.*, 2006, Freitas, 2004); exercises took place in an area surrounded by landmasses separated by less than 35 nm (65 km) and at least 10 nm (19 km) in length, or in an embayment. Exercises

involving multiple ships employing MFA near land may produce sound directed towards a channel or embayment that may cut off the lines of egress for marine mammals (Freitas, 2004).

Canary Islands, Spain (2002)

The southeastern area within the Canary Islands is well known for aggregations of beaked whales due to its ocean depths of greater than 547 fathoms (1000 m) within a few hundred meters of the coastline (Fernandez *et al.*, 2005). On September 24, 2002, 14 beaked whales were found stranded on Fuerteventura and Lanzarote Islands in the Canary Islands (International Council for Exploration of the Sea, 2005a). Seven whales died, while the remaining seven live whales were returned to deeper waters (Fernandez *et al.*, 2005). Four beaked whales were found stranded dead over the next 3 days either on the coast or floating offshore. These strandings occurred within near proximity of an international naval exercise that utilized MFAS and involved numerous surface warships and several submarines. Strandings began about 4 hours after the onset of MFA sonar activity (International Council for Exploration of the Sea, 2005a; Fernandez *et al.*, 2005).

Eight Cuvier's beaked whales, one Blainville's beaked whale, and one Gervais' beaked whale were necropsied, six of them within 12 hours of stranding (Fernandez *et al.,* 2005). No pathogenic bacteria were isolated from the carcasses (Jepson *et al.,* 2003). The animals displayed severe vascular congestion and hemorrhage especially around the tissues in the jaw, ears, brain, and kidneys, displaying marked disseminated microvascular hemorrhages associated with widespread fat emboli (Jepson *et al.,* 2003; International Council for Exploration of the Sea, 2005a). Several organs contained intravascular bubbles, although definitive evidence of gas embolism in vivo is difficult to determine after death (Jepson *et al.,* 2003). The livers of the necropsied animals were the most consistently affected organ, which contained macroscopic gas-filled cavities and had variable degrees of fibrotic encapsulation. In some animals, cavitary lesions had extensively replaced the normal tissue (Jepson *et al.,* 2003). Stomachs contained a large amount of fresh and undigested contents, suggesting a rapid onset of disease and death (Fernandez *et al.,* 2005). Head and neck lymph nodes were enlarged and congested, and parasites were found in the kidneys of all animals (Fernandez *et al.,* 2005).

The association of NATO MFA sonar use close in space and time to the beaked whale strandings, and the similarity between this stranding event and previous beaked whale mass strandings coincident with sonar use, suggests that a similar scenario and causative mechanism of stranding may be shared between the events. Beaked whales stranded in this event demonstrated brain and auditory system injuries, hemorrhages, and congestion in multiple organs, similar to the pathological findings of the Bahamas and Madeira stranding events. In addition, the necropsy results of the Canary Islands stranding event lead to the hypothesis that the presence of disseminated and widespread gas bubbles and fat emboli were indicative of nitrogen bubble formation, similar to what might be expected in decompression sickness (Jepson *et al.,* 2003; Fernandez *et al.,* 2005).

Spain (2006)

The Spanish Cetacean Society reported an atypical mass stranding of four beaked whales that occurred January 26, 2006, on the southeast coast of Spain, near Mojacar (Gulf of Vera) in the Western Mediterranean Sea. According to the report, two of the whales were discovered the evening of January 26 and were found to be still alive. Two other whales were discovered during the day on January 27, but had already died. The fourth animal was found dead on the afternoon of May 27, a few kilometers north of the first three animals. From January 25–26, 2006, Standing North Atlantic Treaty Organization (NATO) Response Force Maritime Group Two (five of seven ships including one U.S. ship under NATO Operational Control) had conducted active sonar training against a Spanish submarine within 50 nm (93 km) of the stranding site.

Veterinary pathologists necropsied the two male and two female Cuvier's beaked whales. According to the pathologists, the most likely primary cause of this type of beaked whale mass stranding event was anthropogenic acoustic activities, most probably anti-submarine MFAS used during the military naval exercises. However, no positive acoustic link was established as a direct cause of the stranding. Even though no causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): Exercises were conducted in areas of at least 547 fathoms (1000 m) depth near a shoreline where there is a rapid change in bathymetry on the order of 547 to 3,281 fathoms (1000–6000 m) occurring across a relatively short horizontal distance (Freitas, 2004); Multiple ships (in this instance, five) were operating MFAS in the same area over extended periods of time (in this case, 20 hours) in close proximity; Exercises took place in an area surrounded by landmasses, or in an embayment. Exercises involving multiple ships employing MFA sonar near land may have produced sound directed towards a channel or embayment that may have cut off the lines of egress for the affected marine mammals (Freitas, 2004).

Hanalei Bay (2004)

On July 3–4, 2004, approximately 150–200 melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hours. Attendees of a canoe blessing observed the animals entering the Bay in a single wave formation at 7 a.m. on July 3, 2004. The animals were observed moving back into the shore from the mouth of the Bay at 9 a.m. The usually pelagic animals milled in the shallow bay and were returned to deeper water with human assistance beginning at 9:30 a.m. on July 4, 2004, and were out of sight by 10:30 a.m.

Only one animal, a calf, was known to have died following this event. The animal was noted alive and alone in the Bay on the afternoon of July 4, 2004 and was found dead in the Bay the morning of July 5, 2004. A full necropsy, magnetic resonance imaging, and computerized tomography examination were performed on the calf to determine the manner and cause of death. The combination of imaging, necropsy and histological analyses found no evidence of infectious, internal traumatic, congenital, or toxic factors. Although cause of death could not be definitively determined, it is likely that maternal separation, poor nutritional condition, and dehydration contributed to the final demise of the animal. Although we do not know when the calf was separated from its mother, the movement into the Bay, the milling and re-grouping may have contributed to the separation or lack of nursing especially if the maternal bond was weak or this was a primiparous calf.

Environmental factors, abiotic and biotic, were analyzed for any anomalous occurrences that would have contributed to the animals entering and remaining in Hanalei Bay. The Bay's bathymetry is similar to many other sites within the Hawaiian Island chain

and dissimilar to sites that have been associated with mass strandings in other parts of the United States. The weather conditions appeared to be normal for that time of year with no fronts or other significant features noted. There was no evidence of unusual distribution or occurrence of predator or prey species, or unusual harmful algal blooms. Weather patterns and bathymetry that have been associated with mass strandings elsewhere were not found to occur in this instance.

A separate event involving melon-headed whales and rough-toothed dolphins took place over the same period of time in the Northern Mariana Islands (Jefferson *et al.,* 2006), which is several thousand miles from Hawaii. Some 500–700 melon-headed whales came into Sasanhaya Bay on 4 July 2004 on the island of Rota and then left of their own accord after 5.5 hours; no known active sonar transmissions occurred in the vicinity of that event. Global reports of these types of events or sightings are of great interest to the scientific community and continuing efforts to enhance reporting in island nations will contribute to our increased understanding of animal behavior and potential causes of stranding events. Exactly what, if any, relationship this event has to the simultaneous events in Hawai'i and whether they might be related to some common factor (e.g., there was a full moon on July 2, 2004) is and will likely remain unknown. However, these two synchronous, nearshore events involving a rarely-sighted species are curious and may point to the range of potential contributing factors for which we lack detailed understanding and which the authors acknowledged might have played some role in the ''confluence of events'' in Hanalei Bay.

The Hanalei event was spatially and temporally correlated with RIMPAC. Official sonar training and tracking exercises in the Pacific Missile Range Facility (PMRF) warning area did not commence until approximately 8 a.m. on July 3 and were thus ruled out as a possible trigger for the initial movement into the Bay.

However, six naval surface vessels transiting to the operational area on July 2 intermittently transmitted active sonar (for approximately 9 hours total from 1:15 p.m. to 12:30 a.m.) as they approached from the south. The potential for these transmissions to have triggered the whales' movement into Hanalei Bay was investigated. Analyses with the information available indicated that animals to the south and east of Kaua'i could have detected active sonar transmissions on July 2, and reached Hanalei Bay on or before 7 a.m. on July 3, 2004. However, data limitations regarding the position of the whales prior to their arrival in the Bay, the magnitude of sonar exposure, behavioral responses of melon-headed whales to acoustic stimuli, and other possible relevant factors preclude a conclusive finding regarding the role of sonar in triggering this event. Propagation modeling suggest that transmissions from sonar use during the July 3 exercise in the PMRF warning area may have been detectable at the mouth of the Bay. If the animals responded negatively to these signals, it may have contributed to their continued presence in the Bay. The U.S. Navy ceased all active sonar transmissions during exercises in this range on the afternoon of July 3, 2004. Subsequent to the cessation of sonar use, the animals were herded out of the Bay.

While causation of this stranding event may never be unequivocally determined, we consider the active sonar transmissions of July 2–3, 2004, a plausible, if not likely, contributing factor in what may have been a confluence of events. This conclusion is based on: (1) The evidently anomalous nature of the stranding; (2) its close spatiotemporal correlation with wide-scale, sustained use of sonar systems previously associated with stranding of deep-diving marine mammals; (3) the directed movement of two groups of transmitting vessels toward the southeast and southwest coast of Kauai; (4) the results of acoustic propagation modeling and an analysis of possible animal transit times to the Bay; and (5) the absence of any other compelling causative explanation. The initiation and persistence of this event may have resulted from an interaction of biological and physical factors. The biological factors may have included the presence of an apparently uncommon, deep-diving cetacean species (and possibly an offshore, non-resident group), social interactions among the animals before or after they entered the Bay, and/or unknown predator or prey conditions. The physical factors may have included the presence of nearby deep water, multiple vessels transiting in a directed manner while transmitting active sonar over a sustained period, the presence of surface sound ducting conditions, and/or intermittent and random human interactions while the animals were in the Bay.

Association Between Mass Stranding Events and Exposure to MFAS

Several authors have noted similarities between some of these stranding incidents: they occurred in islands or archipelagoes with deep water nearby, several appeared to have been associated with acoustic waveguides like surface ducting, and the sound fields created by ships transmitting mid-frequency sonar (Cox *et al.,* 2006, D'Spain *et al.,* 2006). Although Cuvier's beaked whales have been the most common species involved in these stranding events (81 percent of the total number of stranded animals and see Figure 3), other beaked whales (including *Mesoplodon europeaus, M. densirostris*, and *Hyperoodon ampullatus*) comprise 14 percent of the total. Other species (*Stenella coeruleoalba, Kogia breviceps* and *Balaenoptera acutorostrata*) have stranded, but in much lower numbers and less consistently than beaked whales.

Based on the evidence available, however, we cannot determine whether (a) Cuvier's beaked whale is more prone to injury from high-intensity sound than other species, (b) their behavioral responses to sound makes them more likely to strand, or (c) they are more likely to be exposed to mid-frequency active sonar than other cetaceans (for reasons that remain unknown). Because the association between active sonar exposures and marine mammals mass stranding events is not consistent—some marine mammals strand without being exposed to sonar and some sonar transmissions are not associated with marine mammal stranding events despite their co-occurrence—other risk factors or a groupings of risk factors probably contribute to these stranding events.

Behaviorally Mediated Responses to MFAS/HFAS That May Lead to Stranding

Although the confluence of Navy mid-frequency active tactical sonar with the other contributory factors noted in the report was identified as the cause of the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding (or the others) are not understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is unclear whether beaked whales were directly injured by sound (acoustically mediated bubble growth, addressed above) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales be injured and strand.

Although causal relationships between beaked whale stranding events and active sonar remain unknown, several authors have hypothesized that stranding events involving these species in the Bahamas and Canary Islands may

have been triggered when the whales changed their dive behavior in a startled response to exposure to active sonar or to further avoid exposure (Cox *et al.,* 2006, Rommel *et al.*, 2006). These authors proposed two mechanisms by which the behavioral responses of beaked whales upon being exposed to active sonar might result in a stranding event. These include: gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen. More specifically, beaked whales that occur in deep waters that are in close proximity to shallow waters (for example, the ''canyon areas'' that are cited in the Bahamas stranding event; see D'Spain and D'Amico, 2006), may respond to active sonar by swimming into shallow waters to avoid further exposures and strand if they were not able to swim back to deeper waters. Second, beaked whales exposed to active sonar might alter their dive behavior. Changes in their dive behavior might cause them to remain at the surface or at depth for extended periods of time which could lead to hypoxia directly by increasing their oxygen demands or indirectly by increasing their energy expenditures (to remain at depth) and increase their oxygen demands as a result. If beaked whales are at depth when they detect a ping from an active sonar transmission and change their dive profile, this could lead to the formation of significant gas bubbles, which could damage multiple organs or interfere with normal physiological function (Cox *et al.,* 2006; Rommel *et al.,* 2006; Zimmer and Tyack, 2007). Baird *et al.* (2005) found that slow ascent rates from deep dives and long periods of time spent within 50 m of the surface were typical for both Cuvier's and Blainville's beaked whales, the two species involved in mass strandings related to naval sonar. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues during their frequent long dives (Baird *et al.*, 2005). Baird *et al.* (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen).

Because many species of marine mammals make repetitive and prolonged dives to great depths, it has long been assumed that marine mammals have evolved physiological mechanisms to protect against the effects of rapid and repeated decompressions. Although several investigators have identified physiological adaptations that may protect marine mammals against nitrogen gas supersaturation (alveolar collapse and elective circulation; Kooyman *et al.*, 1972; Ridgway and Howard, 1979), Ridgway and Howard (1979) reported that bottlenose dolphins (*Tursiops truncatus*) that were trained to dive repeatedly had muscle tissues that were substantially supersaturated with nitrogen gas. Houser *et al.* (2001) used these data to model the accumulation of nitrogen gas within the muscle tissue of other marine mammal species and concluded that cetaceans that dive deep and have slow ascent or descent speeds would have tissues that are more supersaturated with nitrogen gas than other marine mammals. Based on these data, Cox *et al.* (2006) hypothesized that a critical dive sequence might make beaked whales more prone to stranding in response to acoustic exposures. The sequence began with (1) very deep (to depths as deep as 2 kilometers) and long (as long as 90 minutes) foraging dives with (2) relatively slow, controlled ascents, followed by (3) a series of ''bounce'' dives between 100 and 400 meters in depth (also see Zimmer and Tyack, 2007). They concluded that acoustic exposures that disrupted any part of this dive sequence (for example, causing beaked whales to spend more time at surface without the bounce dives that are necessary to recover from the deep dive) could produce excessive levels of nitrogen supersaturation in their tissues, leading to gas bubble and emboli formation that produces pathologies similar to decompression sickness.

Recently, Zimmer and Tyack (2007) modeled nitrogen tension and bubble growth in several tissue compartments for several hypothetical dive profiles and concluded that repetitive shallow dives (defined as a dive where depth does not exceed the depth of alveolar collapse, approximately 72 m for *Ziphius*), perhaps as a consequence of an extended avoidance reaction to sonar sound, could pose a risk for decompression sickness and that this risk should increase with the duration of the response. Their models also suggested that unrealistically rapid ascent rates of ascent from normal dive behaviors are unlikely to result in supersaturation to the extent that bubble formation would be expected. Tyack *et al.* (2006) suggested that emboli observed in animals exposed to mid-frequency range sonar (Jepson *et al.*, 2003; Fernandez *et al.*, 2005) could stem from a behavioral response that involves repeated dives shallower than the depth of lung collapse. Given that nitrogen gas accumulation is a passive process (i.e. nitrogen is metabolically inert), a bottlenose dolphin was trained to repetitively dive a profile predicted to elevate nitrogen saturation to the point that nitrogen bubble formation was predicted to occur. However, inspection of the vascular system of the dolphin via ultrasound did not demonstrate the formation of asymptomatic nitrogen gas bubbles (Houser *et al.*, 2007).

If marine mammals respond to a Navy vessel that is transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses should increase when they perceive that Navy vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997, 1998). The probability of flight responses should also increase as received levels of active sonar increase (and the ship is, therefore, closer) and as ship speeds increase (that is, as approach speeds increase). For example, the probability of flight responses in Dall's sheep (*Ovis dalli dalli*) (Frid 2001a, b), ringed seals (*Phoca hispida*) (Born *et al.*, 1999), Pacific brant (*Branta bernic nigricans*) and Canada geese (*B. Canadensis*) increased as a helicopter or fixed-wing aircraft approached groups of these animals more directly (Ward *et al.*, 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Despite the many theories involving bubble formation (both as a direct cause of injury (see Acoustically Mediated Bubble Growth Section) and an indirect cause of stranding (See Behaviorally Mediated Bubble Growth Section), Southall *et al.*, (2007) summarizes that scientific agreement or complete lack of information exists regarding the following important points: (1) Received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral reactions (such as atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts

introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

During the HRC training exercises there will be use of multiple sonar units in an area where three species of beaked whale species may be present. A surface duct may be present in a limited area for a limited period of time. Although most of the ASW training events will take place in the deep ocean, some will occur in areas of high bathymetric relief. However, none of the training events will take place in a location having a constricted channel with limited egress similar to the Bahamas (because none exist in the HRC). Consequently, not all five of the environmental factors believed to contribute to the Bahamas stranding (mid-frequency sonar, beaked whale presence, surface ducts, steep bathymetry, and constricted channels with limited egress) will be present during HRC ASW exercises. However, as mentioned previously, NMFS recommends caution when steep bathymetry, surface ducting conditions, or a constricted channel is present in addition to the operation of mid-frequency tactical sonar and the presence of cetaceans (especially beaked whales).

Exposure Underwater Detonation of Explosives

Some of the Navy's training exercises include the underwater detonation of explosives. For many of the exercises discussed, inert ordnance is used for a subset of the exercises. For exercises that involve ''shooting'' at a target that is above the surface of the water, underwater explosions only occur when the target is missed, which is the minority of the time (the Navy has historical hit/miss ratios and uses them in their exposure estimates). The underwater explosion from a weapon would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in worse impacts to an individual animal.

Injuries resulting from a shock wave take place at boundaries between tissues of different density. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.*, 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.*, 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten, 2000). Sound-related damage associated with blast noise can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If an animal is able to hear a noise, at some level it can damage its hearing by causing decreased sensitivity (Ketten, 1995) (See Noise-induced Threshold Shift Section above). Sound-related trauma can be lethal or sublethal. Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

There have been fewer studies addressing the behavioral effects of explosives on marine mammals than MFAS/HFAS. However, though the nature of the sound waves emitted from an explosion is different (in shape and rise time) from MFAS/HFAS, we still anticipate the same sorts of behavioral responses (see Exposure to MFAS/HFAS:Behavioral Disturbance Section) to result from repeated explosive detonations (a smaller range of likely less severe responses would be expected to occur as a result of exposure to a single explosive detonation).

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The National Defense Authorization Act (NDAA) of 2004 amended the MMPA as it relates to military-readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity''. The training activities described in the HRC LOA application are considered military readiness activities.

NMFS reviewed the proposed HRC activities and the proposed HRC mitigation measures (which the Navy refers to as Protective Measures) presented in the Navy's application to determine whether the activities and mitigation measures were capable of achieving the least practicable adverse effect on marine mammals. NMFS determined that further discussion was necessary regarding: (1) Humpback whales congregating in the winter in the shallow areas of the HRC in high densities to calve and breed; and (2) the potential relationship between the operation of MFAS/HFAS and marine mammal strandings. NMFS worked with the Navy to identify additional practicable and effective mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity''.

NMFS and the Navy developed two additional mitigation measures that address the concerns mentioned above, including a humpback whale cautionary area and a Stranding Response Plan. Included below are the mitigation measures the Navy initially proposed

(see ''Mitigation Measures Proposed in the Navy's LOA Application'') and the additional measures that NMFS and the Navy developed (see ''Additional Measures Developed by NMFS and the Navy'' below).

Separately, NMFS has previously received comments from the public expressing concerns regarding potential delays between when marine mammals are visually detected by watchstanders and when the sonar is actually powered or shut down. NMFS and the Navy have discussed this issue and determined the following: Naval operators and lookouts are aware of the potential for a very small delay (up to about 4 seconds) between detecting a marine mammal and powering down or shutting down sonar and will take the actions necessary to ensure that sonar is powered down or shut down when detected animals are within the specified distance (for example, by initiating shut-down when animals are approaching, but not quite within the designated distance).

Mitigation Measures Proposed in the Navy's LOA Application

This section includes the protective measures proposed by the Navy and is taken directly from their application (with the exception of headings, which have been modified for increased clarity within the context of this proposed rule).

Navy's Protective Measures for MFAS/HFAS

Current protective measures employed by the Navy include applicable training of personnel and implementation of activity specific procedures resulting in minimization and/or avoidance of interactions with protected resources.

Navy shipboard lookout(s) are highly qualified and experienced observers of the marine environment. Their duties require that they report all objects sighted in the water to the Officer of the Deck (e.g., trash, a periscope, a marine mammal) and all disturbances (e.g., surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. There are personnel serving as lookouts on station at all times (day and night) when a ship or surfaced submarine is moving through the water.

Navy lookouts undergo extensive training in order to qualify as a watchstander. This training includes on-the-job instruction under the supervision of an experienced watchstander, followed by completion of the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects and night observation techniques). In addition to these requirements, many Fleet lookouts periodically undergo a 2-day refresher training course.

The Navy includes marine species awareness as part of its training for its bridge lookout personnel on ships and submarines. Marine Species Awareness Training (MSAT) was updated in 2005, and the additional training materials are now included as required training for Navy lookouts. This training addresses the lookout's role in environmental protection, laws governing the protection of marine species, Navy stewardship commitments, and general observation information to aid in avoiding interactions with marine species. Marine species awareness and training is reemphasized by the following means:

- Bridge personnel on ships and submarines—Personnel utilize marine species awareness training techniques as standard operating procedure, they have available a marine species visual identification aid when marine mammals are sighted, and they receive updates to the current marine species awareness training as appropriate.
- Aviation units—Pilots and air crew personnel whose airborne duties during Anti-Submarine Warfare (ASW) training activities include searching for submarine periscopes would be trained in marine mammal spotting. These personnel would also be trained on the details of the mitigation measures specific to both their platform and that of the surface combatants with which they are associated.
- Sonar personnel on ships, submarines, and ASW aircraft—Both passive and active sonar operators on ships, submarines, and aircraft utilize protective measures relative to their platform. The Navy issues a Letter of Instruction for each Major Exercise which mandates specific actions to be taken if a marine mammal is detected, and these actions are standard operating procedure throughout the exercise.

Implementation of these protective measures is required of all units. The activities undertaken on a Navy vessel or aircraft are highly controlled. The chain of command supervises these activities. Failure to follow orders can result in disciplinary action.

Personnel Training

(a) All lookouts onboard platforms involved in ASW training events will review the NMFS-approved Marine Species Awareness Training (MSAT) material prior to use of midfrequency active sonar.

(b) All Commanding Officers, Executive Officers, and officers standing watch on the Bridge will have reviewed the MSAT material prior to a training event employing the use of mid-frequency active sonar.

(c) Navy lookouts will undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968–D).

(d) Lookout training will include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, Lookouts will complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). This does not forbid personnel being trained as lookouts from being counted as those listed in previous measures so long as supervisors monitor their progress and performance.

(e) Lookouts will be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

Lookout and Watchstander Responsibilities

(a) On the bridge of surface ships, there will always be at least three people on watch whose duties include observing the water surface around the vessel.

(b) All surface ships participating in ASW exercises will, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as lookouts.

(c) Personnel on lookout and officers on watch on the bridge will have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(d) On surface vessels equipped with mid-frequency active sonar, pedestal mounted ''Big Eye'' (20x110) binoculars will be present and in good working order to assist in the detection of marine mammals in the vicinity of the vessel.

(e) Personnel on lookout will employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–B).

(f) After sunset and prior to sunrise, lookouts will employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(g) Personnel on lookout will be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck, since any object or disturbance (e.g., trash, periscope, surface disturbance, discoloration) in the water may be indicative of a threat to the vessel and its crew or indicative of a marine species that may need to be avoided as warranted.

Operating Procedures

(a) A Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order will be issued prior to the exercise to further disseminate the personnel training requirement and general marine mammal mitigation measures.

(b) Commanding Officers will make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(c) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) will monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(d) During mid-frequency active sonar training activities, personnel will utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(e) Navy aircraft participating in exercises at sea will conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(f) Aircraft with deployed sonobuoys will use only the passive capability of sonobuoys when marine mammals are detected within 200 yards of the sonobuoy.

(g) Marine mammal detections will be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(h) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy will ensure that MFAS transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1,000 yards (914 m) of the sonar dome (the bow).

(i) Ships and submarines will continue to limit maximum MFAS transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(ii) The Navy will ensure that MFAS transmissions will be limited to at least 10 dB below the equipment's normal operating level if any detected animals are within 500 yards (457 m) of the sonar dome. Ships and submarines will continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(iii) The Navy will ensure that MFAS transmissions are ceased if any detected marine mammals are within 200 yards (183 m) of the sonar dome. MFAS will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(iv) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the Officer of the Deck concludes that dolphins or porpoises are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(v) If the need for power-down should arise as detailed in ''Safety Zones'' above, Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 sonar was being operated).

(i) Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.

(j) Sonar levels (generally)—Navy will operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(k) Helicopters shall observe/survey the vicinity of an ASW Operation for 10 minutes before the first deployment of active (dipping) sonar in the water.

(l) Helicopters shall not dip their sonar within 200 yards (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yards (183 m) after pinging has begun.

(m) Submarine sonar operators will review detection indicators of close-aboard marine mammals prior to the commencement of ASW training activities involving active mid-frequency sonar.

Navy's Protective Measures for IEER

The following are protective measures for use with Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER) given an explosive source generates the acoustic wave used in this sonobuoy.

(a) Crews will conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search should be conducted below 500 yards (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft training activities, crews are allowed to conduct coordinated area clearances.

(b) Crews shall conduct a minimum of 30 minutes of visual and acoustic monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(c) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 1,000 yards (914 m) of observed marine mammal activity, deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yards (914 m) of the intended post position, co-locate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.

(d) When able, crews will conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of communication range of these sensors.

(e) Aural Detection: If the presence of marine mammals is detected aurally, then that should cue the aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

(f) Visual Detection:

(i) If marine mammals are visually detected within 1,000 yards (914 m) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed

to have moved outside the 1,000 yards (914 m) safety buffer.

(ii) Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000 yards (914 m) safety buffer.

(g) Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the ''Payload 1 Release'' command followed by the ''Payload 2 Release'' command. Aircrews shall refrain from using the ''Scuttle'' command when two payloads remain at a given post. Aircrews will ensure that a 1,000 yards (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(h) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(i) Ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(j) Mammal monitoring shall continue until out of own-aircraft sensor range.

Navy's Protective Measures for Underwater Detonations

To ensure protection of marine mammals during underwater detonation training and Mining Laying Training, the operating area must be determined to be clear of marine mammals prior to detonation. Implementation of the following mitigation measures continue to ensure that marine mammals would not be exposed to temporary threshold shift (TTS), PTS or injury from physical contact with training mine shapes during Major Exercises.

Demolitions (DEMOs) and Mine Countermeasure (MCM) Training (Up to 20 lb)

Exclusion Zones—All mine warfare and mine countermeasure (MCM) training activities involving the use of explosive charges must include exclusion zones for marine mammals to prevent physical and/or acoustic effects to those species. These exclusion zones shall extend in a 700-yard (640 m) arc radius around the detonation site.

Pre-Exercise Surveys—For MCM training activities, pre-exercise survey shall be conducted within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air, and personnel shall be alert to the presence of any marine mammal or sea turtle. Should such an animal be present within the survey area, the exercise shall be paused until the animal voluntarily leaves the area.

Post-Exercise Surveys—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

Reporting—Any evidence of a marine mammal that may have been injured or killed by the action shall be reported immediately to NMFS and Commander, Pacific Fleet and Commander, Navy Region Southwest, Environmental Director.

Mine Laying Training—Mine Laying Training involves aerial drops of inert training shapes on floating targets. Aircrews are scored for their ability to accurately hit the target although this operation does not involve live ordnance, marine mammals have the potential to be injured if they are in the immediate vicinity of a floating target; therefore, the safety zone shall be clear of marine mammals and sea turtles around the target location. Pre- and post-surveys and reporting requirements outlined for underwater detonations shall be implemented during Mine Laying Training. To the maximum extent feasible, the Navy shall retrieve inert mine shapes dropped during Mine Laying Training.

SINKEX, GUNEX, MISSILEX, and BOMBEX

The selection of sites suitable for sinking exercises (SINKEXs) involves a balance of operational suitability, requirements established under the MPRSA permit granted to the Navy (40 CFR 229.2), and the identification of areas with a low likelihood of encountering endangered species act (ESA) listed species. To meet operational suitability criteria, locations must be within a reasonable distance of the target vessels' originating location. The locations should also be close to active military bases to allow participating assets access to shore facilities. For safety purposes, these locations should also be in areas that are not generally used by non-military air or watercraft. The MPRSA permit requires vessels to be sunk in waters which are at least 1000 fathoms (3000 m) deep and at least 50 nm (92 km) from land.

In general, most listed species prefer areas with strong bathymetric gradients and oceanographic fronts for significant biological activity such as feeding and reproduction. Typical locations include the continental shelf and shelf-edge.

Although the siting of the location for the exercise is not regulated by a permit, the range clearance procedures used for gunnery exercise (GUNEX), missile exercise (MISSILEX), and bombing exercise (BOMBEX) are the same as those described immediately below for a SINKEX.

The Navy has developed range clearance procedures to maximize the probability of sighting any ships or protected species in the vicinity of an exercise, which are as follows:

(a) All weapons firing would be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(b) Extensive range clearance training activities would be conducted in the hours prior to commencement of the exercise, ensuring that no shipping is located within the hazard range of the longest-range weapon being fired for that event.

(c) Prior to conducting the exercise, remotely sensed sea surface temperature maps would be reviewed. SINKEX and air to surface missile (ASM) Training activities would not be conducted within areas where strong temperature discontinuities are present, thereby indicating the existence of oceanographic fronts. These areas would be avoided because concentrations of some listed species, or their prey, are known to be associated with these oceanographic features.

(d) An exclusion zone with a radius of 1.0 nm (1.8 km) would be established around each target. This exclusion zone is based on calculations using a 449 kg (990 lb) H6 NEW high explosive source detonated 5 feet (1.5 m) below the surface of the water, which yields a distance of 0.85 nm (1.57 km) (cold season) and 0.89 nm (1.65 km) (warm season) beyond which the received level is below the 182 dB re: 1 Pa sec2 threshold established for the WINSTON S. CHURCHILL (DDG 81) shock trials. An additional buffer of 0.5 nm (0.9 km) would be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which extends from the exclusion zone at 1.0 nm (1.8 km) out an additional 0.5 nm (0.9 km), would be surveyed. Together, the zones extend out 2 nm (3.6 km) from the target.

(e) A series of surveillance over-flights would be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol would be as follows:

(i) Overflights within the exclusion zone would be conducted in a manner that optimizes the surface area of the

water observed. This may be accomplished through the use of the Navy's Search and Rescue (SAR) Tactical Aid (TACAID). The SAR TACAID provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

(ii) All visual surveillance activities would be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team would have completed the Navy's marine mammal training program for lookouts.

(iii) In addition to the overflights, the exclusion zone would be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals (particularly sperm whales) in the vicinity of the exercise. The sonobuoys would be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE would be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

(iv) On each day of the exercise, aerial surveillance of the exclusion and safety zones would commence two hours prior to the first firing.

(v) The results of all visual, aerial, and acoustic searches would be reported immediately to the OCE (Officer Conducting the Exercise). No weapons launches or firing would commence until the OCE declares the safety and exclusion zones free of marine mammals.

(vi) If a marine mammal observed within the exclusion zone is diving, firing would be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes has elapsed. After 30 minutes, if the animal has not been re-sighted it would be assumed to have left the exclusion zone. This is based on a typical dive time of 30 minutes for traveling marine mammals. The OCE would determine if the marine mammal is in danger of being adversely affected by commencement of the exercise.

(vii) During breaks in the exercise of 30 minutes or more, the exclusion zone would again be surveyed for any marine mammals. If marine mammals are sighted within the exclusion zone, the OCE would be notified, and the procedure described above would be followed.

(viii) Upon sinking of the vessel, a final surveillance of the exclusion zone would be monitored for two hours, or until sunset, to verify that no marine mammals were harmed.

(f) Aerial surveillance would be conducted using helicopters or other aircraft based on necessity and availability. The Navy has several types of aircraft capable of performing this task; however, not all types are available for every exercise. For each exercise, the available asset best suited for identifying objects on and near the surface of the ocean would be used. These aircraft would be capable of flying at the slow safe speeds necessary to enable viewing of marine mammals with unobstructed, or minimally obstructed, downward and outward visibility. The exclusion and safety zone surveys may be cancelled in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

(g) Every attempt would be made to conduct the exercise in sea states that are ideal for marine mammal sighting, Beaufort Sea State 3 or less. In the event of a 4 or above, survey efforts would be increased within the zones. This would be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

(h) The exercise would not be conducted unless the exclusion zone could be adequately monitored visually.

(i) In the unlikely event that any marine mammals are observed to be harmed in the area, a detailed description of the animal would be documented, the location noted, and if possible, photos taken. This information would be provided to NMFS via the Navy's regional environmental coordinator for purposes of identification.

Additional Mitigation Measures Developed by NMFS and the Navy

As mentioned above, NMFS worked with the Navy to identify additional practicable and effective mitigation measures to address the following two issues of concern: (1) Humpback whales congregating in the winter in the shallow areas of the HRC in high densities to calve and breed; and (2) the potential relationship between the operation of MFAS/HFAS and marine mammal strandings. Any mitigation measure prescribed by NMFS should be known to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(a) Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

(b) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(c) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(d) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(e) A reduction in adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(f) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

NMFS and the Navy had extensive discussions regarding mitigation, in which we explored several mitigation options and their respective practicability (these alternatives and their practicability are analyzed in NMFS' Draft Environmental Assessment of the Mitigation Measures to be used in the Issuance of the HRC LOA). Ultimately, NMFS and the Navy developed two additional measures (below), a humpback whale cautionary area and a Stranding Response Plan, which we believe support (or contribute to) the goals mentioned in a–e above. These measures are described below.

Humpback Whale Cautionary Area

Humpback whales migrate to the Hawaiian Islands each winter to rear their calves and mate. Data indicate that, historically, humpbacks have clearly concentrated in high densities in certain areas around the Hawaiian Islands. NMFS has reviewed the Navy's data on MFA sonar training in these dense humpback areas since June 2006 and found it to be rare and infrequent. While past data is no guarantee of future activity, it documents a history of low level MFA sonar activity in dense humpback areas. In order to be successful at operational missions and against the threat of quiet, diesel-electric submarines, the Navy has, for more than 40 years, routinely conducted anti-submarine warfare (ASW) training in major exercises in the waters off the Hawaiian Islands, including the Humpback Whale National Marine Sanctuary. During this period, no reported cases of harmful effects to humpback whales attributed to MFA sonar use have occurred. Coincident with this use of MFA sonar, abundance estimates reflect an annual increase in the humpback whales migrating to Hawaii (Mobely, 2001, 2004).

NMFS and the Navy explored ways of affecting the least practicable impact (which includes a consideration of practicality of implementation and impacts to training fidelity) to humpbacks from exposure to MFA sonar. Proficiency in ASW requires that sailors gain and maintain expert skills and experience in operating MFA sonar in myriad marine environments. Exclusion zones or restricted areas are impracticable and adversely impact MFA sonar training fidelity. The Hawaiian Islands, including areas in which humpback whales concentrate, contain unique bathymetric features the Navy needs to ensure sailors gain critical skills and experience by training in littoral waters. Sound propagates differently in shallow water. No two shallow water areas are the same. Each shallow water area provides a unique training experience that could be critical to address specific future training and assessment requirements. Given the finite littoral areas in the Hawaiian Islands area, maintaining the possibility of using all shallow water training areas is required to ensure sailors receive the necessary training to develop and maintain critical MFA sonar skills. In real world events, crew members will be working in these types of areas and these are the types of areas where the adversary's quiet diesel-electric submarines will be operating. Without the critical ASW training in a variety of different near-shore environments, crews will not have the skills and varied experience needed to successfully operate MFA sonar in these types of waters, negatively affecting vital military readiness.

The Navy recognizes the significance of the Hawaiian Islands for humpback whales. The Navy has designated a humpback whale cautionary area (described below), which consists of a 5-km buffer zone around an area that has been identified as having one of the highest concentrations of humpback whales during the critical winter months. The Navy has agreed that training exercises in the humpback whale cautionary area will require a much higher level of clearance than is normal practice in planning and conducting MFA sonar training. Should national security needs require MFA sonar training and testing in the cautionary area between December 15 and April 15, it shall be personally authorized by the Commander, U.S. Pacific Fleet (CPF). The CPF shall base such authorization on the unique characteristics of the area from a military readiness perspective, taking into account the importance of the area for humpback whales and the need to minimize adverse impacts on humpback whales from MFA sonar whenever practicable. Approval at this level for this type of activity is extraordinary. CPF is a four-star Admiral and the highest ranking officer in the United States Pacific Fleet. This case-by-case authorization cannot be delegated and represents the Navy's commitment to fully consider and balance mission requirements with environmental stewardship. Further, CPF will provide specific direction on required mitigation prior to operational units transiting to and training in the cautionary area. This process will ensure the decisions to train in this area are made at the highest level in the Pacific Fleet, heighten awareness of humpback activities in the cautionary area, and serve to reemphasize that mitigation measures are to be scrupulously followed. The Navy will provide NMFS with advance notification of any such activities.

Stranding Response Plan for Major Navy Training Exercises in the HRC

NMFS and the Navy have developed a draft Stranding Response Plan for Major Exercises in the HRC (available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*). Pursuant to 50 CFR Section 216.105, the plan will be included as part of (attached to) the Navy's MMPA Letter of Authorization (LOA), which indicates the conditions under which the Navy is authorized to take marine mammals pursuant to training activities involving MFAS or explosives in the Hawaii Range Complex (HRC). The Stranding Response plan is specifically intended to outline the applicable requirements the authorization is conditioned upon in the event that a marine mammal stranding is reported in the Hawaii Range Complex (HRC) during a major training exercise (MTE) (see glossary below). As mentioned above, NMFS considers all plausible causes within the course of a stranding investigation and this plan in no way presumes that any strandings in the HRC are related to, or caused by, Navy training activities, absent a determination made in a Phase 2 Investigation as outlined in Paragraph 7 of this plan, indicating that MFAS or explosive detonation in the HRC were a cause of the stranding. This plan is designed to address the following three issues:

- *Mitigation*—When marine mammals are in a situation that can be defined as a stranding (see glossary of plan), they are experiencing physiological stress. When animals are stranded, and alive, NMFS believes that exposing these compromised animals to additional known stressors would likely exacerbate the animal's distress and could potentially cause its death. Regardless of the factor(s) that may have initially contributed to the stranding, it is NMFS' goal to avoid exposing these animals to further stressors. Therefore, when live stranded cetaceans are in the water and engaged in what is classified as an Uncommon Stranding Event (USE) (see glossary of plan), the shutdown component of this plan is intended to minimize the exposure of those animals to MFAS and explosive detonations, regardless of whether or not these activities may have initially played a role in the event.
- *Monitoring*—This plan will enhance the understanding of how MFAS or explosive detonations (as well as other environmental conditions) may, or may not, be associated with marine mammal injury or strandings. Additionally, information gained from the investigations associated with this plan may be used in the adaptive management of mitigation or monitoring measures in subsequent LOAs, if appropriate.
- *Compliance*—The information gathered pursuant to this protocol will inform NMFS' decisions regarding compliance with Sections 101(a)(5)(B and C) of the MMPA.

The Stranding Response Plan has several components:

Shutdown Procedures—When an uncommon stranding event (USE—

defined in the plan) occurs during a major exercise in the HRC, and a live cetacean(s) is in the water exhibiting indicators of distress (defined in the plan), NMFS will advise the Navy that they should cease MFAS/HFAS operation and explosive detonations within 14 nm (26 km) of the live animal involved in the USE (NMFS and Navy will maintain a dialogue, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures). This distance (14 nm) (26 km) is the distance at which sound from the sonar source is anticipated to attenuate to approximately 140–145 dB (SPL). The risk function predicts that less than 1 percent of the animals exposed to sonar at this level (mysticete or odontocete) would respond in a manner that NMFS considers Level B Harassment.

Memorandum of Agreement (MOA)—The Navy and NMFS will develop an MOA, or other mechanism consistent with federal fiscal law requirements (and all other applicable laws), that allows the Navy to assist NMFS with the Phase 1 and 2 Investigations of USEs through the provision of in-kind services, such as (but not limited to) the use of plane/boat/truck for transport of stranding responders or animals, use of Navy property for necropsies or burial, or assistance with aerial surveys to discern the extent of a USE. The Navy may assist NMFS with the Investigations by providing one or more of the in-kind services outlined in the MOA, when available and logistically feasible and when the provision does not negatively affect Fleet operational commitments.

Communication Protocol—Effective communication is critical to the successful implementation of this Stranding Response Plan. Very specific protocols for communication, including identification of the Navy personnel authorized to implement a shutdown and the NMFS personnel authorized to advise the Navy of the need to implement shutdown procedures (NMFS Protected Resources HQ—senior administrators) and the associated phone trees, etc. are currently in development and will be refined and finalized for the Stranding Response Plan prior to the issuance of a final rule (and updated yearly).

Stranding Investigation—The Stranding Response Plan also outlines the way that NMFS intends to investigate any strandings that occur during major training exercises in the HRC.

Mitigation Conclusions

NMFS believes that the range clearance procedures and shutdown/safety zone/exclusion zone measures the Navy has proposed will enable the Navy to avoid injuring any marine mammals and will enable them to minimize the numbers of marine mammals exposed to levels associated with TTS for the following reasons:

MFAS/HFAS

The Navy's standard protective measures indicate that they will ensure powerdown MFAS/HFAS 6 dB when a marine mammal is detected within 1000 yd (.914 km), powerdown 4 more dB (or 10 dB total) when a marine mammal is detected within 500 yd (.457 km), and cease MFAS/HFAS transmissions when a marine mammal is detected within 200 yd (.183 km).

PTS/Injury—NMFS believes that the proposed mitigation measures will allow the Navy to avoid exposing marine mammals to received levels of MFAS/HFAS sound that would result in injury for the following reasons:

- The estimated distance from the source at which an animal would receive a level of 215 dB SEL (threshold for PTS/injury/Level A Harassment) is approximately 10 m (10.9 yd).
- NMFS believes that the probability that a marine mammal would approach within 10 m (10.9 yd) of the sonar dome (to the sides or below) without being seen by the watchstanders (who would then activate a shutdown if the animal was within 200 yd (183 m) is very low, especially considering that the model did not predict any animals (see Table 15) would be exposed to a 215 dB SEL of MFAS/HFAS and animals would likely avoid approaching a source transmitting at that level at that distance.

TTS—NMFS believes that the proposed mitigation measures will allow the Navy to minimize exposure of marine mammals to received levels of MFAS/HFAS sound associated with TTS for the following reasons:

- The estimated range of distances from the source at which an animal would receive 195 dB SEL (the TTS threshold) is from 110–165 m (120–180 yd) from the source.
- Based on the size of the animals, average group size, behavior, and average dive time, NMFS believes that the probability that Navy watchstanders will visually detect mysticetes or sperm whales, dolphins, and social pelagic species (pilot whales, melon-headed whales, etc.) at some point within the 1000 yd (.914 km) safety zone before they are exposed to the TTS threshold levels is high, which means that the Navy would be able to shutdown or powerdown to avoid exposing these species to levels associated with TTS.
- However, more cryptic, deep-diving species (beaked whales and *Kogia* sp.) are less likely to be visually detected and could potentially be exposed to levels of MFAS/HFAS expected to cause TTS. Additionally, the Navy's bow-riding mitigation exception for dolphins may sometimes allow dolphins to be exposed to levels of MFAS/HFAS likely to result in TTS.

Underwater Explosives

The Navy utilizes exclusion zones (wherein explosive detonation will not begin/continue if animals are within the zone) for explosive exercises. Table 8 indicates the various explosives, the estimated distance at which animals will receive levels associated with take (see Acoustic Take Criteria Section), and the exclusion zone associated with the explosive types.

Mortality and Injury—NMFS believes that the mitigation measures will allow the Navy to avoid exposing marine mammals to underwater detonations that would result in injury or mortality for the following reasons:

- Surveillance for large charges (which includes aerial and passive acoustic detection methods, when available, to ensure clearance) begins two hours before the exercise and extends to 2 nm (3704 m) from the source.
- Animals would need to be within less than 1023 m (1118 yd) (large explosives) or 305 m (334 yd) (smaller charges) from the source to be injured.
- Unlike for sonar, an animal would need to be present at the exact moment of the explosion(s) (except for the short series of gunfire example in GUNEX) to be taken.
- The model predicted only 3 animals would be exposed to levels associated with injury (though for the reasons above, NMFS does not believe they will be exposed) to those levels).
- When the implementation of the exclusion zones (i.e., not starting or continuing to detonate explosives if an animal is detected within the exclusion zone) is combined with the above bullets, NMFS believes that the Navy's mitigation will be effective for avoiding injury and mortality to marine mammals from explosives.

TTS—NMFS believes that the proposed mitigation measures will allow the Navy to minimize the exposure of marine mammals to underwater detonations that would result in TTS for the following reasons:

• Very few animals were predicted to be exposed to explosive levels that would result in TTS—and for the reasons above, NMFS believes that most modeled TTS takes can be avoided, especially dolphins, mysticetes and sperm whales, and social pelagic species.

• However, more cryptic, deep-diving species (beaked whales and *Kogia* sp.) are less likely to be visually detected and could potentially be exposed to explosive levels expected to cause TTS.

• Additionally, for two of the explosive types (MK–84 and MK–48), though the distance to the presuure threshold is within the exclusion zone, the distance at which an animal would be expected to receive SEL levels associated with TTS (182 dB SEL) is larger than the exclusion zone, which means that for those two explosive types, any species could potentially be exposed to levels associated with TTS if it was detected in the limited area outside of the exclusion zone, but inside the distance to 182 dB SEL.

	lbs	TTS		Injury		Mortality	Exclusion
		182 SEL	23 psi	205 SEL	13 psi-ms	31 psi-ms	Zone Used
5" Naval gunfire	9.5	249	254	12	91	18	1852 m (1 nm)
76mm rounds	1.6	74	114	8	17	13	1852 m (1 nm)
Maverick	78.5	652	532	18	550	268	1852 m (1 nm)
Harpoon	448	1020	785	39	852	472	1852 m (1 nm)
MK-82	238	982	759	65	824	452	1852 m (1 nm)
MK-83	574	1322	992	113	1023	639	1852 m (1 nm)
MK-84	945	3834	1236	234	723	384	1852 m (1 nm)
MK-48	851	3495	1178	228	759	442	1852 m (1 nm)
Demolition Charges	20 (max)	643 (703 yd)	532	115	305	148	700 yd
EER/IEER	5	460	270	17	154	75	1000 yd

Table 8. Estimated maximum distances to indicated Criteria from source (meters unless otherwise noted)

The Stranding Response Plan will minimize the probability of distressed live-stranded animals responding to the proximity of sonar in a manner that further stresses them or increases the potential likelihood of mortality. The Humpback Whale Cautionary Area is intended to reduce the number and intensity of potential humpback exposures to MFAS/HFAS.

NMFS has preliminarily determined that the Navy's proposed mitigation measures (from the LOA application), along with the Humpback Whale Cautionary Area and the Stranding Response Plan (and when the Adaptive Management (see Adaptive Management below) component is taken into consideration) are adequate means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

These mitigation measures may be refined, modified, removed, or added to prior to the issuance of the final rule based on the comments and information received during the public comment period.

Research and Conservation Measures for Marine Mammals

The Navy is working towards a better understanding of marine mammals and sound in ways that are not directly related to the MMPA process. The Navy highlights some of those ways in the section below. Further, NMFS is working on a long-term stranding study that will be supported by the Navy by way of a funding and information sharing component (see below).

Navy's Conservation Measures

The Navy will continue to fund ongoing marine mammal research in the Hawaiian Islands. Results of conservation efforts by the Navy in other locations will also be used to support efforts in the Hawaiian Islands. The Navy is coordinating both short and long term monitoring/studies of marine mammals on various established ranges and operating areas to determine the response of marine mammals to Navy sound sources and the effectiveness of mitigation measures:

• Coordinating with NMFS to conduct surveys within the selected Hawaiian Islands Operating Area as part of a baseline monitoring program.

• Implementing a long-term monitoring program of marine mammal populations in the Hawaiian Islands Operating Area, including evaluation of trends.

• Implementing a marine mammal monitoring program in the HRC during training exercises.

• Continuing Navy research and Navy contribution to university/external research to improve the state of the science regarding marine species biology and acoustic effects.

• Sharing data with NMFS and via the literature for research and development efforts.

Long-Term Prospective Study

Apart from this proposed rule, NMFS, with input and assistance from the Navy and several other agencies and entities, will perform a longitudinal observational study of marine mammal strandings to systematically observe for and record the types of pathologies and diseases and investigate the relationship with potential causal factors (e.g., sonar, seismic, weather). The study will not be a true ''cohort'' study, because we will be unable to quantify or estimate specific sonar or other sound exposures for individual animals that strand. However, a cross-sectional or correlational analyses, a method of descriptive rather than analytical epidemiology, can be conducted to compare population characteristics, e.g., frequency of strandings and types of specific pathologies between general periods of various anthropogenic activities and non-activities within a prescribed geographic space. In the long term study, we will more fully and consistently collect and analyze data on the demographics of strandings in specific locations and consider anthropogenic activities and physical,

chemical, and biological environmental parameters. This approach in conjunction with true cohort studies (tagging animals, measuring received sounds, and evaluating behavior or injuries) in the presence of activities and non-activities will provide critical information needed to further define the impacts of MTEs and other anthropogenic and non-anthropogenic stressors. In coordination with the Navy and other federal and non-federal partners, the comparative study will be designed and conducted for specific sites during intervals of the presence of anthropogenic activities such as sonar transmission or other sound exposures and absence to evaluate demographics of morbidity and mortality, lesions found, and cause of death or stranding. Additional data that will be collected and analyzed in an effort to control potential confounding factors include variables such as average sea temperature (or just season), meteorological or other environmental variables (e.g., seismic activity), fishing activities, etc. All efforts will be made to include appropriate controls (i.e., no sonar or no seismic); environmental variables may complicate the interpretation of ''control'' measurements. The Navy and NMFS along with other partners are evaluating mechanisms for funding this study.

Monitoring

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

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(a) An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below.

(b) An increase in our understanding of how many marine mammals are likely to be exposed to levels of MFAS (or explosives or other stimuli) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

(c) An increase in our understanding of how marine mammals respond to MFAS (at specific received levels), explosives, or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of MFAS compared to observations in the absence of sonar (need to be able to accurately predict received level and report bathymetric conditions, distance from source, and other pertinent information.
- Physiological measurements in the presence of MFAS compared to observations in the absence of sonar (need to be able to accurately predict received level and report bathymetric conditions, distance from source, and other pertinent information), and/or
- Pre-planned and thorough investigation of stranding events that occur coincident to naval activities.
- Distribution and/or abundance comparisons in times or areas with concentrated MFAS versus times or areas without MFAS.

(d) An increased knowledge of the effected species.

(e) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Plan for the HRC

The Navy has submitted a draft Monitoring Plan for the HRC, which may be viewed at NMFS' Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* NMFS and the Navy have worked together on the development of this plan in the months preceding the publication of this proposed rule; however, we are still refining the plan and anticipate that it will contain more details by the time it is finalized in advance of the issuance of the final rule. Additionally, the plan may be modified or supplemented based on comments or new information received from the public during the public comment period. A summary of the primary components of the plan follows.

The draft Monitoring Plan for the HRC has been designed as a collection of focused ''studies'' (described fully in the HRC Monitoring Plan) to gather data that will allow the Navy to address the following questions:

(a) Are marine mammals exposed to mid-frequency active sonar (MFAS), especially at levels associated with adverse effects (i.e., based on NMFS'criteria for behavioral harassment, TTS, or PTS)? If so, at what levels are they exposed?

(b) If marine mammals are exposed to MFAS in the HRC, do they redistribute geographically as a result of continued exposure? If so, how long does the redistribution last?

(c) If marine mammals are exposed to MFAS, what are their behavioral responses to various levels?

(d) What are the behavioral responses of marine mammals that are exposed to explosives at specific levels?

(e) Is the Navy's suite of mitigation measures for MFAS and explosives (e.g., PMAP, major exercise measures agreed to by the Navy through permitting) effective at avoiding TTS, injury, and mortality of marine mammals?

Data gathered in these studies will be collected by qualified, professional marine mammal biologists that are experts in their field. They will use a combination of the following methods to collect data:

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STUDY 1,3, 4 (exposures and behavioral responses)	FY08	FY09	FY10	FY11	FY12	FY13
Aerial surveys	Award monitoring contract, develop SOP, obtain permits	SCC OPS, or TRE or Unit Level - 60 hours of active sonar	SCC OPS or TRE or Unit Level - 60 hours of active sonar	SCC OPS or TRE or Unit Level - 60 hours of active sonar	(Only if not enough data to complete study)	(Only if not enough data to complete study)
		Three nearshore underwater detonation events	Three nearshore underwater detonation events	Three nearshore underwater detonation events	SCC OPS or TRE or Unit Level - 60 hours of active sonar	
			1-2 SINKEX events		Three nearshore underwater detonation events	SCC OPS or TRE or Unit Level - 60 hours of active sonar
					1-2 SINKEX events	
Marine Mammal Observers	Opportunistic as staff and SOP developed	SCC OPS or TRE or Unit Level - 60 hours	SCC OPS or TRE or Unit Level - 60 hours	SCC OPS or TRE or Unit Level - 60 hours	(Only if not enough data to complete study)	(Only if not enough data to complete study)
					SCC OPS or TRE or Unit Level - 60 hours	SCC OPS or TRE or Unit Level - 60 hours if study not completed
Tagging before during and after training events	NOAA project in conjunction with RIMPAC 08 (partial Navy funding)	Order tags and secure tagging permit	SCC OPS August and February – 5 animals	SCC OPS August and February – 5 animals	SCC OPS August and February – 5 animals	(Only if not enough data to complete study)
	Award monitoring contract		Unit level - 5 animals	Unit level – 5 animals	Unit level – 5 animals	SCC OPS August and February – 5 animals
						Unit level – 5 animals
Vessel surveys (study 3 and 4 only)	NOAA project in conjunction with RIMPAC 08 (partial Navy funding)	USWEX – 40 hours	USWEX – 40 hours	USWEX – 40 hours	(Only if not enough data to complete study)	(Only if not enough data to complete study)
	Award monitoring contract, develop SOP	Unit level – 100 hours	Unit level – 100 hours	Unit level – 100 hours	USWEX – 40 hours	USWEX – 40 hours
		Three nearshore underwater detonation events	Three nearshore underwater detonation events	Three nearshore underwater detonation events	Unit level – 100 hours	Unit level – 100 hours
					Three nearshore underwater detonation	Three nearshore underwater detonation
Shore based surveys (study 4 only)		Nearshore underwater detonation events near appropriate coastal topography	Nearshore underwater detonation events near appropriate coastal topography	Nearshore underwater detonation events near appropriate coastal topography	(Only if not enough data to complete study)	(Only if not enough data to complete study)
					Nearshore underwater detonation events near appropriate coastal topography	Nearshore underwater detonation events near appropriate coastal topography
STUDY 2 (geographic redistribution)	**FY08**	**FY09**	**FY10**	**FY11**	**FY12**	**FY13**
Aerial surveys before and after training events	USWEX – 60 hours	Unit level – 40 hours	Unit level – 40 hours	Unit level – 40 hours	(Only if not enough data to complete study)	(Only if not enough data to complete study)
	RIMPAC – 40 hours				Unit Level - 40 hours	Unit Level - 40 hours
Passive Acoustics	Award monitoring contract	Order devices and determine best location	Installation of 10 autonomous devices in the HRC	Continue recording from 10 devices	Continue recording from 10 devices and data analysis	Data Analysis and continue recording from 10 devices only if not enough data to complete study
			Begin recording	Begin data analysis		
Study 5 (mitigation effectiveness)	**FY08**	**FY09**	**FY10**	**FY11**	**FY12**	**FY13**
Marine mammal observers/lookout comparison	Training Events – 40 hours	Unit level – 100 hours	Unit level – 100 hours	Unit level – 100 hours	(Only if not enough data to complete study)	(Only if not enough data to complete study)
		Training events – 40 hours	Training Events– 40 hours	Training Events – 40 hours	Unit level – 100 hours	Unit level – 100 hours
					Training Events – 40 hours	Training Events – 40 hours
Aerial surveys before and after training events, exercise area and coastlines	USWEX – 60 hours	Unit level – 40 hours	Unit level – 40 hours	Unit level – 40 hours	(Only if not enough data to complete study)	(Only if not enough data to complete study)
	RIMPAC – 40 hours				Unit level – 40 hours	Unit level – 40 hours

Table 9. Summary of monitoring effort proposed in Monitoring Plan for the Hawaii Range Complex

In addition to the Monitoring Plan for the HRC, by the end of 2009, the Navy will have completed an Integrated Comprehensive Monitoring Program (ICMP). The ICMP will provide the overarching structure and coordination that will, over time, compile data from both range specific monitoring plans (such as HRC, the Atlantic Fleet Active Sonar Training Range (AFAST), or the Southern California Range Complex) as well as Navy funded research and development (R&D) studies. The primary objectives of the ICMP are:

- To monitor Navy training events, particularly those involving mid-frequency sonar and underwater detonations, for compliance with the terms and conditions of ESA Section 7 consultations or MMPA authorizations;
- To collect data to support estimating the number of individuals exposed to sound levels above current regulatory thresholds;
- To assess the efficacy of the Navy's current marine species mitigation;
- To add to the knowledgebase on potential behavioral and physiological effects to marine species from mid-frequency active sonar and underwater detonations; and,
- To assess the practicality and effectiveness of a number of mitigation tools and techniques (some not yet in use).

More information about the ICMP may be found in the draft Monitoring Plan for the HRC.

Past Monitoring in the HRC

Since RIMPAC 2006, which was the first Navy training activity utilizing MFAS to receive an MMPA authorization and an incidental take statement pursuant to the ESA, NMFS has received four monitoring reports (one covering two exercises) addressing MFAS use in the HRC, including the RIMPAC after action report (AAR). The Navy's AARs may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. For three of the exercises, the reports describe observations by the watchstanders (who are involved in the training exercise) only. For two of the exercises (RIMPAC and the most recent USWEX), independent marine mammal observers were used to collect data before, during, and after the exercises. NMFS has reviewed these reports and has summarized the results, as related to marine mammal observations, below.

RIMPAC 2006

During the RIMPAC exercises in July 2006, the Navy operated MFAS hull-mounted sonar for 472 hours. They operated active sonobuoys for 115 hours and helicopter dipping sonar for 110 hours, however, these sources do not ping continuously and put far less sound in the water per hour than hull-mounted sonar. A map in the AAR showing the locations of the marine mammal sightings indicates that the exercises covered a very large area, both to the north and south of the islands, with the majority of the sightings of marine mammals occurring in the open ocean (not near shore).

Observations by Exercise Participants—Table 10 summarizes the marine mammals sighted by exercise participants and whether or not sonar was shut down. The Navy indicates in its report that no evidence of behavioral effects was observed.

MFAS active	Navy implemented shutdown (or unable to turn on sonar source)	Distance from MFAS source	Number of animals sighted	Species (if identified)	Detection Method
Yes	Yes	> 3000 yd		marine mammal	heli
Yes	Yes			marine mammal	heli
Yes	Yes	< 1000 yd	pod	dolphins	surface ship
Yes	Yes	< 200 yd		whale	
No	not applicable	500 yd		dolphin	surface ship
No	not applicable	300 yd	pod	whales	surface ship
No	not applicable	200 yd		whale	surface ship
Yes	Yes			marine mammal	
Yes	Yes	< 4000 yd		marine mammal	passive acoustic
Yes	No	> 1000 yd		whale	surface ship
Yes	No	> 1000 yd		marine mammal	surface ship
No	not applicable			dolphin	surface ship
Yes	Yes		2	whales	P-3 aircraft
Yes	Yes		2 pods of 10	pilot whales	surface ship
Yes	Yes	200 yd	pod of 3	pilot whales	surface ship
Yes	Yes	1000 yd		whales	surface ship
Yes	Yes		pod	whales	surface ship
Yes	Yes			marine mammals	surface ship
No	not applicable	off bow	pod	dolphins	surface ship
Yes	Yes		8	whales	P-3 aircraft
No	not applicable		5	dolphins	surface ship
No	not applicable		20	dolphins	surface ship
No	not applicable	1-2 miles		porpoises	surface ship
No	not applicable			pilot whales	surface ship
Yes	Yes		20	whales	surface ship
No	not applicable			whale	surface ship

Table 10. Summary of marine mammal sightings by RIMPAC 2006 participants.

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Observations by Marine Mammal Observers—The Navy contracted marine mammal observers to conduct aerial surveys, and their summary and conclusions of the monitoring are described here. A total of six aerial surveys of marine mammals were performed on dates corresponding with scheduled dates for ''choke point'' maneuvers of the RIMPAC exercises. Three surveys were performed in the vicinity of the Kaulakahi Channel (between Kauai and Niihau) (July 16, 17 and 20) and three were performed in the Alenuihaha Channel (between Hawaii and Maui) (July 24–26). The mission of the surveys was to detect, locate and identify all marine mammal species in the target areas using methods consistent with modern distance sampling theory. Marine mammals were sighted on four of the six surveys, comprising a total of 13 groups. All sightings consisted of small- to medium-sized odontocetes (toothed cetaceans), including one sighting each of bottlenose dolphins, spotted dolphins, Cuvier's beaked whale, false killer whale, unidentified beaked whale and eight sightings of unidentified delphinid species. Encounter rates of odontocete sightings (sightings/km surveyed) in this series were identical to those seen during earlier survey series (1993–03), though at different times of the year. No unusual observations (*e.g.*, sightings of unusual behavior or aggregations, near strandings, or stranded or dead animals) were noted during the total of approximately 18 hrs. of survey effort.

USWEX 06–04

During this three-day exercise, which was conducted from September 19–21, 2006 and in which the hours of sonar use were not reported, no marine mammals were sighted by the exercise participants.

USWEX 07–02

This exercise was conducted from April 10–11, 2007 and involved 5 MFAS-equipped ships, one non-MFAS equipped ship, and 8–12 helicopters. Other participating units representing support and opposition forces, which did not utilize sonar, included 2 submarines and 3 MFA-equipped ships. During the exercise, 265.5 hours of sonar use were reported.

No marine mammals were sighted by the participants during the exercise.

USWEX 07–03

This exercise was conducted from April 17–18, 2007, and involved 3 MFAS-equipped ships, 3 non-MFAS equipped ships, and 6 helicopters. Other participating units representing support and opposition forces, which did not utilize sonar, included 2 submarines and 2 MFA-equipped ships. During this exercise 50.1 hours of sonar use were reported.

One large whale was sighted by Navy watchstanders at a distance of approximately 300 yds when MFAS was not operating.

USWEX 08–1

USWEX 08–1 was conducted from November 13–15, 2007, and involved 3 MFAS-equipped ships, several other non-MFAS-equipped ships, and 2–4 helicopters with dipping sonar. During the exercise, a total of 77 hours of MFAS time was reported from all sources, including hull-mounted, helicopter dipping, and DICASS sonobuoys. The exercise was primarily conducted to the Northeast (extending far out to sea) of Oahu (a map is available in the AAR).

Observations by Exercise Participants

There were no sightings of marine mammals within 2000 yds by Navy personnel engaged in the training during USWEX 08–01. Sea states were high during some of the exercise period, which may have limited sightings of smaller marine mammals.

Observations of Marine Mammal Observers

Aerial Survey

A pre- and post-exercise aerial survey was conducted by a civilian science crew from 1 to 12 November and 15 to 17 November. The purpose of these surveys was to detect, locate, and identify all marine mammals and sea turtles observed within a 2384 mi^2 (6175 km^2) grid (to the east and northeast of Oahu); and during circumnavigation of the islands of Oahu and Molokai. Over 17 hours of survey time was conducted, involving a linear distance of approximately 1,701 nm (3150 km). There were 26 marine mammal sightings (six at sea with the remaining 20 observed nearshore), including short-finned pilot whales, Hawaiian spinner dolphins, bottlenose dolphins, Hawaiian monk seals, and three unidentified species (*Stenella* sp., dolphin and baleen whale) (see Table 11). Time was spent characterizing behavior at the time of the sightings and no indications of distressed or unusual behavior were documented. Additionally, there were no observations of any stranded or floating dead marine mammals. More information regarding the findings of these aerial surveys may be found in Appendix B of the USWEX 08–01 Monitoring report, which is posted on the NMFS Web site, at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Species	No. Sightings	No. Individuals
Short-finned pilot whale	2	31
Hawaiian spinner dolphin	2	84
Bottlenose dolphin	1	5
Stenella sp.	1	31
Hawaiian monk seal	2	3
Unidentified dolphin	1	1
Unidentified whale	1	1

Table 11. Summary of sightings by species during aerial surveys of USWEX 08-01

Vessel Survey

A civilian science-based research vessel conducted a visual monitoring survey for cetaceans and sea turtles from November 11–17, 2007. The purpose of these surveys was to monitor, identify, and report surface behavior of marine mammals observed before, during, and after the scheduled training exercise; particularly any injured or harmed marine mammals and/or unusual behavior or changes in behavior, distribution and numbers of animals. Another goal was to attempt to remain within view of any opportunistically encountered Navy vessels while conducting surveys and focal follows sessions. The effort was focused in the same designated survey box as the aerial survey team, to the east and northeast of Oahu. A total of 66 hours and approximately 911 km (492 nm) were visually surveyed over seven days with a total of eight cetacean groups sighted. Line surveys were conducted over 817 km (441 nm) (with 105 km (57 nm) while Navy vessels were within view) and animals were focally followed for a total of approximately 63 km (34 nm). None of the whales followed during the focal sessions exhibited any notable evasive or disturbance behavior related to the observation vessel or as defined under the MMPA. No injured or dead whales were detected.

A summary of the marine mammals sighted and their associated behaviors (including those that occurred during four focal follows) is presented in Table 12. The observers documented the first occurrence of Bryde's whale near the main Hawaiian islands, previous verified sightings have only occurred in the leeward Northwestern chain of the Hawaiian Islands. A Navy vessel was operating MFAS at approximately the same time as the Bryde's whale focal follow, at approximately 50 nm (93 km) away. Post exercise modeling predicted that the Bryde's whale may have been exposed to received levels of up to 141dB (SPL), though, as mentioned previously, no unusual behaviors were observed.

The vessel survey report, which is included in Appendix C of the Navy's AAR, and available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*, draws some conclusions regarding the efficacy of certain monitoring techniques and makes recommendations for future monitoring plans. The Navy has taken this information into consideration in developing the monitoring plan for the HRC that is proposed here.

						Results from Animals that were specifically focally followed				
Date	Species	Initial Sighting Distance (km)	Beaufort Sea State	Group Size/ Composition	Summary of Observed Behavior	Total time with animals (mins)	Depth (m)	Behavioral State	Individual Non-blow behavior	Focal Follow Comments
12-Nov	**UnID'd small whale (possibly Ziphius cavirostris)**	4	3	1/unknown	Unable to resight, probable beaked whale					
12-Nov	**Sei whale**	3.2	2 to 3	1/adult	26 resights of 1 sei whale in 2.25 h. Repeatedly approached boat; blew every 6-12 minutes.	145	2500	Slow travel	No blow rise	Maintained slow travel throughout observations, often logging just below surface.
13-Nov	**Bryde's whale**	<1.6	3	1/adult	11 resights of Bryde's whale. Whale approached boat to within ~65 m.	50	4500	Slow travel	No blow rise, underwater blow	Maintained slow travel speed throughout observations; Navy vessel in view over horizon during encounter
14-Nov	**Risso's dolphin**	0.5	6	5/adult	Sighting made near bow in proximity to previous location of yellowfin tuna school					
15-Nov	**Spinner dolphins**	0.32	4	10/adult	3 subgroups totalling ~10 swam close and parallel to shore as headed to mouth of bay at dusk; crossed bow.					
16-Nov	**UnID'd medium delphinid**	0.8	6	5/unknown	Unable to resight. Probable pygmy killer whales					
16-Nov	**Sei whale**	2.9	4	3/sudadults	Looked like 1-2 yr-old whales	64	5000	logging, slow travel	No blow rise	Repeatedly followed vessel, crossed bow and "surfed" bow wave and swells. Whale movement appeared to be propelled by swells
17-Nov	**Humpback whale**	1.6	3	3, 1subadult/ 2 adults	May have been up to 5 individuals, seen 1-2 at a time. Other blows seen near horizon on Penguin Bank	70	40	fast and medium travel, surface active travel	peduncle slap, pectoral fin slap, tail swish, fluke up, peducle arch no blow rise	Frequently changed travel direction in apparent response to other nearby humpbacks; appeared to be a disaffiliation then and affiliation of humpbacks associated with sruface-active behaviors

Table 12. Summary of results from vessel surveys conducted 11-17 November. Additional results of animals that were focally followed presented on right side of table.

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General Conclusions Drawn From Review of Monitoring Reports

Because NMFS has received relatively few monitoring reports from sonar training in the HRC, and even fewer that have utilized independent aerial or vessel-based observers, it is too early to draw any biological conclusions. However, NFMS can draw some general conclusions from the content of the monitoring reports:

(a) The data gathered by independent observers contains far more detail than the data gathered by watchstanders. Data from watchstanders is generally useful to indicate the presence or absence of marine mammals within the safety zones (and sometimes without) and to document the implementation of mitigation measures, but does not provide useful species' specific information or behavioral data. Data gathered by independent observers can provide very valuable information at a level of detail not possible with watchstanders, such as the presence of sub-adult sei whales in the Hawaiian islands in fall, potentially indicating the use of the area for breeding.

(b) More marine mammal sightings per hour of effort were reported by independent observers than by Navy watchstanders. Out of approximately 1100 hours of sonar operation, the Navy watchstanders reported 30 sightings of marine mammals. Out of approximately 100 hours of observation, the independent observers reported 47 sightings of marine mammals (if the observations and hours that were specifically near shore or in channels are removed (likely higher density of marine mammals), the independent observers had 14 sightings in 80 hours of effort: 6 sightings in 14 hours of aerial and 8 sightings in 66 hours of vessel-based). There are a couple of possible explanations for this:

(i) MFAS was likely operating in much closer proximity to and for a significantly larger percentage of the time when watchstanders were reporting marine mammal sightings as compared to when independent observers were reporting them. Marine mammals may have been avoiding the sonar source and therefore been present in lower numbers immediately around the watchstanders (usually on the same platform as the sonar source itself), or within the distance that the watchstanders could easily detect them. Alternatively, MFAS was not necessarily operating in the immediate vicinity of the independent observers, and even when so, the source was at least a few miles away.

(ii) Because of their experience and training, independent vessel-based marine mammal observers may see a higher percentage of the animals at the surface than the Navy watchstanders (0.12 sightings/hour versus 0.03 sightings/hour, respectively).

(c) Though it is by no means conclusory, it is worth noting that no instances of obvious behavioral disturbance were observed either by the Navy watchstanders or the independent observers (and a portion of the independent observations were reported within the vicinity of operating MFAS)

in the 1200+ hours of effort in which 77 sightings of marine mammals were made. Though of course, these observations only cover the animals that were at the surface (or slightly below in the case of aerial surveys) and within the distance that the observers can see with the big-eye binoculars or from the aircraft.

(d) NMFS and the Navy need to more carefully designate what information should be gathered during monitoring, as some reports contain different information, making cross-report comparisons difficult. For example, some reports indicate marine mammals seen within the safety zones, while others indicate marine mammals detected within any distance.

Adaptive Management

Adaptive Management was addressed above in the context of the Stranding Response Plan because that Section will be a stand-alone document. More specifically, the final regulations governing the take of marine mammals incidental to Navy training exercises in the HRC will contain an adaptive management component. Our understanding of the effects of MFAS/HFAS on marine mammals is still in its relative infancy, and yet the science in this field is evolving fairly quickly. These circumstances make the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations for activities that have been associated with marine mammal mortality in certain circumstances and locations (though not the HRC). The use of adaptive management will give NMFS the ability to consider new data from different sources to determine (in coordination with the Navy), on an annual basis if new or modified mitigation or monitoring measures are appropriate for subsequent annual LOAs. Following are some of the possible sources of applicable data:

- Results from the Navy's monitoring from the previous year (either from the HRC or other locations).
- Results from specific stranding investigations (either from the HRC or other locations, and involving coincident MFAS training or not involving coincident use).
- Results from the Long Term Prospective Study described below.
- Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

Mitigation measures could be modified or added if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures were practicable. NMFS could also coordinate with the Navy to modify or add to the existing monitoring requirements if the new data suggest that the addition of a particular measure would likely fill in a specifically important data gap.

Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. Some of the reporting requirements are still in development and the final rule may contain additional details not contained in the proposed rule. Additionally, proposed reporting requirements may be modified, removed, or added based on information or comments received during the public comment period. Currently, there are several different reporting requirements pursuant to these proposed regulations:

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with species or description of the animal (s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Stranding Response Plan contains more specific reporting requirements for specific circumstances.

SINKEX, GUNEX, MISSILEX, BOMBEX, and IEER

A yearly report detailing the exercise's timeline, the time the surveys commenced and terminated, amount, and types of all ordnance expended, and the results of survey efforts for each event will be submitted to NMFS.

MFAS Mitigation/Navy Watchstanders

The Navy will submit an After Action Report to the Office of Protected Resources, NMFS, within 120 days of the completion of a Major Training Exercise (RIMPAC, USWEX, and Multi Strike Group). For other ASW exercises (TRACKEX and TORPEX), the Navy will submit a yearly summary report. These reports will, at a minimum, include the following information:

- The estimated number of hours of sonar operation, broken down by source type.
- If possible, the total number of hours of observation effort (including observation time when sonar was not operating).
- A report of all marine mammal sightings (at any distance—not just within a particular distance) to include, when possible and to the best of their ability, and if not classified:
  - Species.
  - Number of animals sighted.
  - Location of marine mammal sighting.
  - Distance of animal from any operating sonar sources.
  - Whether animal is fore, aft, port, starboard.
  - Direction animal is moving in relation to source (away, towards, parallel).
  - Any observed behaviors of marine mammals.
- The status of any sonar sources (what sources were in use) and whether or not they were powered down or shut down as a result of the marine mammal observation.
- The platform that the marine mammals were sighted from.

Monitoring Report

Although the draft Monitoring Plan for the HRC contains a general description of the monitoring that the Navy plans to conduct (and that NMFS has analyzed) in the HRC, the detailed analysis and reporting protocols that will be used for the Hawaii monitoring plan are still being refined at this time. The draft HRC Monitoring plan may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Standard marine species sighting forms will be used by Navy lookouts and biologists to standardize data collection and data collection methods will be standardized across ranges to allow for comparison in different geographic locations. Reports of the required monitoring will be submitted to NMFS on an annual basis as well as in the form of a multi-year report that compiles all five years worth of monitoring data (reported at end of fourth year of rule—in future rules will include the last year of the prior rule).

HRC Comprehensive Report

The Navy will submit to NMFS a draft report that analyzes and summarizes *all* of the multi-year marine mammal information gathered during ASW and explosive exercises for which individual

reports are required in § 216.175 (d–f). This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012. The Navy will respond to NMFS comments on the draft comprehensive report if submitted within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or three months after the submittal of the draft if NMFS does not comment by then.

Comprehensive National ASW Report

The Navy will submit a draft Comprehensive National ASW Report that analyzes, compares, and summarizes the data gathered from the watchstanders and pursuant to the implementation of the Monitoring Plans for the HRC, the Atlantic Fleet active Sonar Training (AFAST), and the Southern California (SOCAL) Range Complex. The Navy will respond to NMFS comments on the draft comprehensive report if submitted within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or three months after the submittal of the draft if NMFS does not comment by then.

Estimated Take of Marine Mammals

As mentioned previously, for the purposes of MMPA authorizations, NMFS' effects assessments have two primary purposes (in the context of the HRC LOA, where subsistence communities are not present): (1) To put forth the permissible methods of taking within the context of MMPA Level B Harassment (behavioral harassment), Level A Harassment (injury), and mortality (i.e., identify the number and types of take that will occur); and (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival).

In the Potential Effects of Exposure of Marine Mammal to MFAS/HFAS and Underwater Detonations section, NMFS' analysis identified the lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), and behavioral responses that could potentially result from exposure to MFAS/HFAS or underwater explosive detonations. In this section, we will relate the potential effects to marine mammals from MFAS/HFAS and underwater detonation of explosives to the MMPA regulatory definitions of Level A and Level B Harassment and attempt to quantify the effects that might occur from the specific training activities that the Navy is proposing in the HRC.

Definition of Harassment

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Level B Harassment

Of the potential effects that were described in the Potential Effects of Exposure of Marine Mammal to MFAS/HFAS and Underwater Detonations Section, following are the types of effects that fall into the Level B Harassment category:

Behavioral Harassment—Behavioral disturbance that rises to the level described in the definition above, when resulting from exposures to MFAS/HFAS or underwater detonations, is considered Level B Harassment. Some of the lower level physiological stress responses discussed in the Potential Effects of Exposure of Marine Mammal to MFAS/HFAS and Underwater Detonations Section: Stress Section will also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When Level B Harassment is predicted based on estimated behavioral responses, those takes may have a stress-related physiological component as well.

In the effects section above, we described the Southall *et al.*, (2007) severity scaling system and listed some examples of the three broad categories of behaviors: (0–3: Minor and/or brief behaviors); 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival); 7–9 (Behaviors considered likely to affect the aforementioned vital rates). Generally speaking, MMPA Level B Harassment, as defined in this document, would include the behaviors described in the 7–9 category, and a subset, dependent on context and other considerations, of the behaviors described in the 4–6 categories. Behavioral harassment does not include behaviors ranked 0–3 in Southall *et al.*, (2007).

Acoustic Masking and Communication Impairment—Acoustic masking is considered Level B Harassment as it can disrupt natural behavioral patterns by interrupting or limiting the marine mammal's receipt or transmittal of important information or environmental cues.

TTS—As discussed previously, TTS can effect how an animal behaves in response to the environment, including conspecifics, predators, and prey. The following physiological mechanisms are thought to play a role in inducing auditory fatigue: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS, they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to either MFAS/HFAS or underwater detonations) as Level B Harassment, not Level A Harassment (injury).

Level A Harassment

Of the potential effects that were described in the Potential Effects of Exposure of Marine Mammal to MFAS/HFAS and Underwater Detonations Section, following are the types of effects that fall into the Level A Harassment category:

PTS—PTS (resulting either from exposure to MFAS/HFAS or explosive detonations) is irreversible and considered an injury. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and result in changes in the chemical composition of the inner ear fluids.

Acoustically Mediated Bubble Growth—A few theories suggest ways in which gas bubbles become enlarged through exposure to intense sounds

(MFAS/HFAS) to the point where tissue damage results. In rectified diffusion, exposure to a sound field would cause bubbles to increase in size. Alternately, bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. Tissue damage from either of these processes would be considered an injury.

Behaviorally Mediated Bubble Growth—Several authors suggest mechanisms in which marine mammals could behaviorally respond to exposure to MFAS/HFAS by altering their dive patterns in a manner (unusually rapid ascent, unusually long series of surface dives, etc.) that might result in unusual bubble formation or growth ultimately resulting in tissue damage (emboli, etc.)

Physical Disruption of Tissues Resulting from Explosive Shock Wave—Physical damage of tissues resulting from a shock wave (from an explosive detonation) is classified as an injury. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000) and gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible (Goertner, 1982; Hill 1978; Yelverton *et al.*, 1973). Nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Severe damage (from the shock wave) to the ears can include tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear.

Acoustic Take Criteria

For the purposes of an MMPA incidental take authorization, three types of take are identified: Level B Harassment; Level A Harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into the two harassment categories were described in the previous section.

Because the physiological and behavioral responses of the majority of the marine mammals exposed to MFAS/HFAS and underwater detonations cannot be detected or measured (not all responses visible external to animal, portion of exposed animals underwater (so not visible), many animals located many miles from observers and covering very large area, etc.) and because NMFS must authorize take prior to the impacts to marine mammals, a method is needed to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the proposed action. To this end, NMFS developed acoustic criteria that estimate at what received level (when exposed to MFAS/HFAS or explosive detonations) Level B Harassment, Level A Harassment, and mortality (for explosives) of marine mammals would occur. The acoustic criteria for MFAS/HFAS and Underwater Detonations are discussed below.

MFAS/HFAS Acoustic Criteria

Because relatively few applicable data exist to support acoustic criteria specifically for HFAS and because such a small percentage of the sonar pings that marine mammals will likely be exposed to incidental to this activity come from a HFAS source (the vast majority come from MFAS sources), NMFS will apply the criteria developed for the MFAS to the HFAS as well.

NMFS utilizes three acoustic criteria for MFAS/HFAS: PTS (injury—Level A Harassment), TTS (Level B Harassment), and behavioral harassment (Level B Harassment). Because the TTS and PTS criteria are derived similarly and the PTS criteria was extrapolated from the TTS data, the TTS and PTS acoustic criteria will be presented first, before the behavioral criteria.

For more information regarding these criteria, please see the Navy's FEIS for the HRC.

Level B Harassment Threshold (TTS)

As mentioned above, behavioral disturbance, acoustic masking, and TTS are all considered Level B Harassment. Marine mammals would usually be behaviorally disturbed at lower received levels than those at which they would likely sustain TTS, so the levels at which behavioral disturbance is likely to occur are considered the onset of Level B Harassment. The behavioral responses of marine mammals to sound are variable, context specific, and, therefore, difficult to quantify (see Risk Function section, below). TTS is a physiological effect that has been studied and quantified in laboratory conditions. Because data that support an estimate of at what received levels marine mammals will TTS exist, NMFS also uses an acoustic criteria to estimate the number of marine mammals that might sustain TTS incidental to a specific activity (in addition to the behavioral criteria).

A number of investigators have measured TTS in marine mammals. These studies measured hearing thresholds in trained marine mammals before and after exposure to intense sounds. The existing cetacean TTS data are summarized in the following bullets.

- Schlundt *et al.* (2000) reported the results of TTS experiments conducted with 5 bottlenose dolphins and 2 belugas exposed to 1-second tones. This paper also includes a reanalysis of preliminary TTS data released in a technical report by Ridgway *et al.* (1997). At frequencies of 3, 10, and 20 kHz, sound pressure levels (SPLs) necessary to induce measurable amounts (6 dB or more) of TTS were between 192 and 201 dB re 1 μPa (EL = 192 to 201 dB re 1 μPa2-s). The mean exposure SPL and EL for onset-TTS were 195 dB re 1 μPa and 195 dB re 1 μPa^2-s, respectively.
- Finneran *et al.* (2001, 2003, 2005) described TTS experiments conducted with bottlenose dolphins exposed to 3-kHz tones with durations of 1, 2, 4, and 8 seconds. Small amounts of TTS (3 to 6 dB) were observed in one dolphin after exposure to ELs between 190 and 204 dB re 1 μPa^2-s. These results were consistent with the data of Schlundt *et al.* (2000) and showed that the Schlundt *et al.* (2000) data were not significantly affected by the masking sound used. These results also confirmed that, for tones with different durations, the amount of TTS is best correlated with the exposure EL rather than the exposure SPL.
- Nachtigall *et al.* (2003) measured TTS in a bottlenose dolphin exposed to octave-band sound centered at 7.5 kHz. Nachtigall *et al.* (2003a) reported TTSs of about 11 dB measured 10 to 15 minutes after exposure to 30 to 50 minutes of sound with SPL 179 dB re 1 μPa (EL about 213 dB re μPa^2-s). No TTS was observed after exposure to the same sound at 165 and 171 dB re 1 μPa. Nachtigall *et al.* (2004) reported TTSs of around 4 to 8 dB 5 minutes after exposure to 30 to 50 minutes of sound with SPL 160 dB re 1 μPa (EL about 193 to 195 dB re 1 μPa^2-s). The difference in results was attributed to faster post-exposure threshold measurement—TTS may have recovered before being detected by Nachtigall *et al.* (2003). These studies showed that, for long-duration exposures, lower sound pressures are required to induce TTS than are required for short-duration tones.
- Finneran *et al.* (2000, 2002) conducted TTS experiments with dolphins and belugas exposed to impulsive sounds similar to those produced by distant underwater explosions and seismic waterguns. These studies showed that, for very short-duration impulsive sounds, higher sound pressures were required to induce TTS than for longer-duration tones.
- Kastak *et al.* (1999a, 2005) conducted TTS experiments with three species of pinnipeds, California sea lion,

northern elephant seal and a Pacific harbor seal, exposed to continuous underwater sounds at levels of 80 and 95 dB SPL at 2.5 and 3.5 kHz for up to 50 minutes. Mean TTS shifts of up to 12.2 dB occurred with the harbor seals showing the largest shift of 28.1 dB. Increasing the sound duration had a greater effect on TTS than increasing the sound level from 80 to 95 dB.

Some of the more important data obtained from these studies are onset-TTS levels (exposure levels sufficient to cause a just-measurable amount of TTS) often defined as 6 dB of TTS (for example, Schlundt *et al.*, 2000) and the fact that energy metrics (sound exposure levels (SEL), which include a duration component) better predict when an animal will sustain TTS than pressure (SPL) alone. NMFS' TTS criteria (which indicate the received level at which onset TTS (>6dB) is induced) for MFAS/HFAS are as follows:

• Cetaceans—195 dB re 1 μPa²-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans (Southall *et al.* (2007)).

• Pinnipeds (monk seals)—204 dB re 1 μPa²-s (based on data from elephant seals, which are the most closely related to the monk seal).

A detailed description of how TTS criteria were derived from the results of the above studies may be found in Chapter 3 of Southall *et al.* (2007), as well as the Navy's HRC LOA application.

Level A Harassment Threshold (PTS)

For acoustic effects, because the tissues of the ear appear to be the most susceptible to the physiological effects of sound, and because threshold shifts tend to occur at lower exposures than other more serious auditory effects, NMFS has determined that PTS is the best indicator for the smallest degree of injury that can be measured. Therefore, the acoustic exposure associated with onset-PTS is used to define the lower limit of the Level A harassment.

PTS data do not currently exist for marine mammals and are unlikely to be obtained due to ethical concerns. However, PTS levels for these animals may be estimated using TTS data from marine mammals and relationships between TTS and PTS that have been discovered through study of terrestrial mammals. NMFS uses the following acoustic criteria for injury:

• Cetaceans—215 dB re 1 μPa²-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans (Southall *et al.* (2007)).

• Pinnipeds (monk seals)—224 dB re 1 μPa²-s (based on data from elephant seals, which are the most closely related to the monk seal).

These criteria are based on a 20 dB increase in SEL over that required for onset-TTS. Extrapolations from terrestrial mammal data indicate that PTS occurs at 40 dB or more of TS, and that TS growth occurs at a rate of approximately 1.6 dB TS per dB increase in EL. There is a 34-dB TS difference between onset-TTS (6 dB) and onset-PTS (40 dB). Therefore, an animal would require approximately 20dB of additional exposure (34 dB divided by 1.6 dB) above onset-TTS to reach PTS. A detailed description of how TTS criteria were derived from the results of the above studies may be found in Chapter 3 of Southall *et al.* (2007), as well as the Navy's HRC LOA application. Southall *et al.* (2007) recommend a precautionary dual criteria for TTS (230 dB re 1 μPa (SPL) in addition to 215 re 1 μPa²-s (SEL)) to account for the potentially damaging transients embedded within non-pulse exposures. However, in the case of MFAS/HFAS, the distance at which an animal would receive 215 (SEL) is farther from the source than the distance at which they would receive 230 (SPL) and therefore, it is not necessary to consider 230 dB.

We note here that behaviorally mediated injuries (such as those that have been hypothesized as the cause of some beaked whale strandings) could potentially occur in response to received levels lower than those believed to directly result in tissue damage. As mentioned previously, data to support a quantitative estimate of these potential effects (for which the exact mechanism is not known and in which factors other than received level may play a significant role) do not exist. However, based on the number of years (more than 40) and number of hours of MFAS per year that the U.S. (and other countries) has operated compared to the reported (and verified) cases of associated marine mammal strandings, NMFS believes that the probability of these types of injuries is very low.

Level B Harassment Risk Function (Behavioral Harassment)

In 2006, NMFS issued the only MMPA authorization that has, as yet, authorized the take of marine mammals incidental to MFAS. For that authorization, NMFS used 173 SEL as the criterion for the onset of behavioral harassment (Level B Harassment). This type of single number criterion is referred to as a step function, in which (in this example) all animals estimated to be exposed to received levels above 173 SEL would be predicted to be taken by Level B Harassment and all animals exposed to less than 173 SEL would not be taken by Level B Harassment. As mentioned previously, marine mammal behavioral responses to sound are highly variable and context specific (affected by differences in acoustic conditions; differences between species and populations; differences in gender, age, reproductive status, or social behavior; or the prior experience of the individuals), which does not support the use of a step function to estimate behavioral harassment.

Unlike step functions, acoustic risk continuum functions (which are also called ''exposure-response functions,'' ''dose-response functions,'' or ''stress-response functions'' in other risk assessment contexts) allow for probability of a response that NMFS would classify as harassment to occur over a range of possible received levels (instead of one number) and assume that the probability of a response depends first on the ''dose'' (in this case, the received level of sound) and that the probability of a response increases as the ''dose'' increases (see Figure 3a). The Navy and NMFS have previously used acoustic risk functions to estimate the probable responses of marine mammals to acoustic exposures for other training and research programs. Examples of previous application include the Navy FEISs on the SURTASS LFA sonar (U.S. Department of the Navy, 2001c); the North Pacific Acoustic Laboratory experiments conducted off the Island of Kauai (Office of Naval Research, 2001), and the Supplemental EIS for SURTASS LFA sonar (U.S. Department of the Navy, 2007d). As discussed in the Effects section, factors other than received level (such as distance from or bearing to the sound source) can affect the way that marine mammals respond; however, data to support a quantitative analysis of those (and other factors) do not currently exist. NMFS will continue to modify these criteria as new data becomes available.

The particular acoustic risk functions developed by NMFS and the Navy (see Figures 3a and b) estimate the probability of behavioral responses to MFAS/HFAS (interpreted as the percentage of the exposed population) that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFA sonar. The mathematical function (below) underlying this curve is a cumulative probability distribution adapted from a solution in Feller (1968) and was also used in predicting risk for

the Navy's SURTASS LFA MMPA authorization as well.

$$R = \frac{1-\left(\frac{L-B}{K}\right)^{-A}}{1-\left(\frac{L-B}{K}\right)^{-2A}}$$

Where:

R = Risk (0—1.0)
L = Received level (dB re: 1 μPa)
B = Basement received level = 120 dB re: 1 μPa
K = Received level increment above B where 50 percent risk = 45 dB re: 1 μPa
A = Risk transition sharpness parameter = 10 (odontocetes) or 8 (mysticetes)

In order to use this function to estimate the percentage of an exposed population that would respond in a manner that NMFS classifies as Level B Harassment, based on a given received level, the values for B, K and A need to be identified.

B Parameter (Basement)—The B parameter is the estimated received level below which the probability of disruption of natural behavioral patterns, such as migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered approaches zero for the MFAS/HFAS risk assessment. At this received level, the curve would predict that the percentage of the exposed population that would be taken by Level B Harassment approaches zero. For MFAS/HFAS, NMFS has determined that B = 120 dB. This level is based on a broad overview of the levels at which many species have been reported responding to a variety of sound sources.

K Parameter (representing the 50 percent Risk Point)—The K parameter is based on the received level that corresponds to 50 percent risk, or the received level at which we believe 50 percent of the animals exposed to the designated received level will respond in a manner that NMFS classifies as Level B Harassment. The K parameter (K = 45 dB) is based on three datasets in which marine mammals exposed to mid-frequency sound sources were reported to respond in a manner that NMFS would classify as Level B Harassment. There is widespread consensus that marine mammal responses to MFA sound signals need to be better defined using controlled exposure experiments (Cox *et al.*, 2006; Southall *et al.*, 2007). The Navy is contributing to an ongoing behavioral response study in the Bahamas that is expected to provide some initial information on beaked whales, the species identified as the most sensitive to MFAS. NMFS is leading this international effort with scientists from various academic institutions and research organizations to conduct studies on how marine mammals respond to underwater sound exposures. Additionally, the Navy plans to tag whales in conjunction with the 2008 RIMPAC exercises. Until additional data is available, however, NMFS and the Navy have determined that the following three data sets are most applicable for the direct use in establishing the K parameter for the MFAS/HFAS risk function. These data sets, summarized below, represent the only known data that specifically relate altered behavioral responses (that NMFS would consider Level B Harassment) to exposure to MFAS sources.

Even though these data are considered the most representative of the proposed specified activities, and therefore the most appropriate on which to base the K parameter (which basically determines the midpoint) of the risk function, these data have limitations, which are discussed in Appendix J of the Navy's FEIS for the HRC.

1. Controlled Laboratory Experiments with Odontocetes (SSC Dataset)—Most of the observations of the behavioral responses of toothed whales resulted from a series of controlled experiments on bottlenose dolphins and beluga whales conducted by researchers at SSC's facility in San Diego, California (Finneran *et al.*, 2001, 2003, 2005; Finneran and Schlundt, 2004; Schlundt *et al.*, 2000). In experimental trials (designed to measure TTS) with marine mammals trained to perform tasks when prompted, scientists evaluated whether the marine mammals performed these tasks when exposed to mid-frequency tones. Altered behavior during experimental trials usually involved refusal of animals to return to the site of the sound stimulus, but also included attempts to avoid an exposure in progress, aggressive behavior, or refusal to further participate in tests.

Finneran and Schlundt (2004) examined behavioral observations recorded by the trainers or test coordinators during the Schlundt *et al.* (2000) and Finneran *et al.* (2001, 2003, 2005) experiments. These included observations from 193 exposure sessions (fatiguing stimulus level > 141 dB re 1Pa) conducted by Schlundt *et al.* (2000) and 21 exposure sessions conducted by Finneran *et al.* (2001, 2003, 2005). The TTS experiments that supported Finneran and Schlundt (2004) are further explained below:

- Schlundt *et al.* (2000) provided a detailed summary of the behavioral responses of trained marine mammals during TTS tests conducted at SSC San Diego with 1-sec tones and exposure frequencies of 0.4 kHz, 3 kHz, 10 kHz, 20 kHz and 75 kHz. Schlundt *et al.* (2000) reported eight individual TTS experiments. The experiments were conducted in San Diego Bay. Because of the variable ambient noise in the bay, low-level broadband masking noise was used to keep hearing thresholds consistent despite fluctuations in the ambient noise. Schlundt *et al.* (2000) reported that ''behavioral alterations,'' or deviations from the behaviors the animals being tested had been trained to exhibit, occurred as the animals were exposed to increasing fatiguing stimulus levels.
- Finneran *et al.* (2001, 2003, 2005) conducted 2 separate TTS experiments using 1-sec tones at 3 kHz. The test methods were similar to that of Schlundt *et al.* (2000) except the tests were conducted in a pool with very low ambient noise level (below 50 dB re 1 μPa²/hertz [Hz]), and no masking noise was used. In the first, fatiguing sound levels were increased from 160 to 201 dB SPL. In the second experiment, fatiguing sound levels between 180 and 200 dB SPL were randomly presented.

Bottlenose dolphins exposed to 1-second (sec) intense tones exhibited short-term changes in behavior above received sound levels of 178 to 193 dB re 1 μPa (rms), and beluga whales did so at received levels of 180 to 196 dB and above.

2. Mysticete Field Study (Nowacek *et al.*, 2004)—The only available and applicable data relating mysticete responses to exposure to mid-frequency sound sources is from Nowacek *et al.* (2004). Nowacek *et al.* (2004) documented observations of the behavioral response of North Atlantic right whales exposed to alert stimuli containing mid-frequency components in the Bay of Fundy. Investigators used archival digital acoustic recording tags (DTAG) to record the behavior (by measuring pitch, roll, heading, and depth) of right whales in the presence of an alert signal, and to calibrate received sound levels. The alert signal was 18 minutes of exposure consisting of three 2-minute signals played sequentially three times over. The three signals had a 60 percent duty cycle and consisted of: (1) Alternating 1-sec pure tones at 500 Hz and 850 Hz; (2) a 2-sec logarithmic down-sweep from 4,500 Hz to 500 Hz; and (3) a pair of low (1,500 Hz)-high (2,000 Hz) sine wave tones amplitude modulated at 120 Hz and each 1-sec long. The purposes of the alert signal were (a) to pique the mammalian auditory system with

disharmonic signals that cover the whales' estimated hearing range; (b) to maximize the signal to noise ratio (obtain the largest difference between background noise) and c) to provide localization cues for the whale. The maximum source level used was 173 dB SPL.

Nowacek *et al.* (2004) reported that five out of six whales exposed to the alert signal with maximum received levels ranging from 133 to 148 dB re 1 μPa significantly altered their regular behavior and did so in identical fashion. Each of these five whales: (i) Abandoned their current foraging dive prematurely as evidenced by curtailing their 'bottom time'; (ii) executed a shallow-angled, high power (i.e. significantly increased fluke stroke rate) ascent; (iii) remained at or near the surface for the duration of the exposure, an abnormally long surface interval; and (iv) spent significantly more time at subsurface depths (1–10 m) compared with normal surfacing periods when whales normally stay within 1 m (1.1 yd) of the surface.

3. Odontocete Field Data (Haro Strait—USS SHOUP)—In May 2003, killer whales (*Orcinus orca*) were observed exhibiting behavioral responses generally described as avoidance behavior while the U.S. Ship (USS) SHOUP was engaged in MFAS in the Haro Strait in the vicinity of Puget Sound, Washington. Those observations have been documented in three reports developed by Navy and NMFS (NMFS, 2005; Fromm, 2004a, 2004b; DON, 2003). Although these observations were made in an uncontrolled environment, the sound field that may have been associated with the sonar operations was estimated using standard acoustic propagation models that were verified (for some but not all signals) based on calibrated in situ measurements from an independent researcher who recorded the sounds during the event. Behavioral observations were reported for the group of whales during the event by an experienced marine mammal biologist who happened to be on the water studying them at the time. The observations associated with the USS SHOUP provide the only data set available of the behavioral responses of wild, non-captive animal upon actual exposure to AN/SQS–53 sonar.

U.S. Department of Commerce (National Marine Fisheries, 2005a); U.S. Department of the Navy (2004b); Fromm (2004a, 2004b) documented reconstruction of sound fields produced by USS SHOUP associated with the behavioral response of killer whales observed in Haro Strait. Observations from this reconstruction included an approximate closest approach time which was correlated to a reconstructed estimate of received level (which ranged from 150 to 180 dB) at an approximate whale location with a mean value of 169.3 dB SPL.

Calculation of K Paramenter—NMFS and the Navy used the mean of the following values to define the midpoint of the function: (1) The mean of the lowest received levels (185.3 dB) at which individuals responded with altered behavior to 3 kHz tones in the SSC data set; (2) the estimated mean received level value of 169.3 dB produced by the reconstruction of the USS SHOUP incident in which killer whales exposed to MFA sonar (range modeled possible received levels: 150 to 180 dB); and (3) the mean of the 5 maximum received levels at which Nowacek *et al.* (2004) observed significantly altered responses of right whales to the alert stimuli than to the control (no input signal) is 139.2 dB SPL. The arithmetic mean of these three mean values is 165 dB SPL. The value of K is the difference between the value of B (120 dB SPL) and the 50 percent value of 165 dB SPL; therefore, K=45.

A Parameter (Steepness)—NMFS determined that a steepness parameter (A)=10 is appropriate for odontocetes and pinnipeds and A=8 is appropriate for mysticetes.

The use of a steepness parameter of A=10 for odontocetes for the MFAS/HFAS risk function was based on the use of the same value for the SURTASS LFA risk continuum, which was supported by a sensitivity analysis of the parameter presented in Appendix D of the SURTASS/LFA FEIS (U.S. Department of the Navy, 2001c). As concluded in the SURTASS FEIS/EIS, the value of A=10 produces a curve that has a more gradual transition than the curves developed by the analyses of migratory gray whale studies (Malme *et al.*, 1984; Buck and Tyack, 2000; and SURTASS LFA Sonar EIS, Subchapters 1.43, 4.2.4.3 and Appendix D, and National Marine Fisheries Service, 2008).

NMFS determined that a lower steepness parameter (A=8), resulting in a shallower curve, was appropriate for use with mysticetes and MFAS/HFAS. The Nowacek *et al.* (2004) dataset contains the only data illustrating mysticete behavioral responses to a mid-frequency sound source. A shallower curve (achieved by using A=8) better reflects the risk of behavioral response at the relatively low received levels at which behavioral responses of right whales were reported in the Nowacek *et al.* (2004) data. Compared to the odontocete curve, this adjustment results in an increase the proportion of the exposed population of mysticetes being classified as behaviorally harassed at lower RLs, such as those reported in and is supported by the only dataset currently available.

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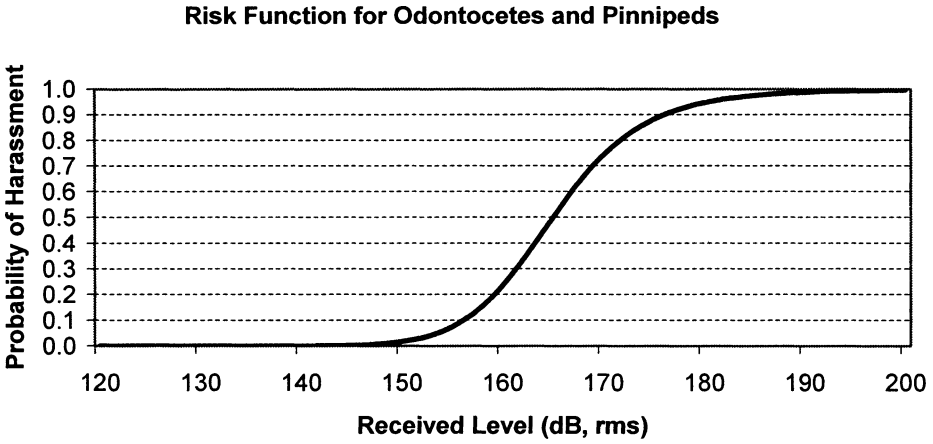

Figure 3a. Risk function for odontocetes and pinnipeds. B=120 dB, K=45 dB, A=10.

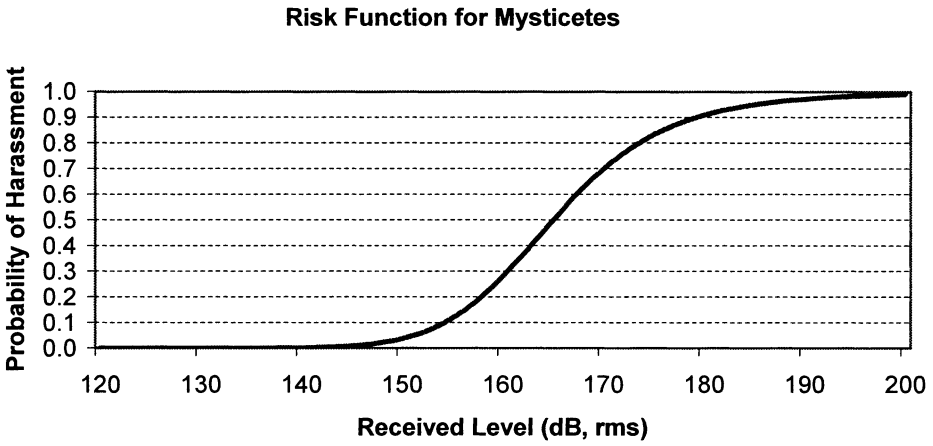

Figure 3b. Risk function for mysticetes. B=120 dB, K=45 dB, A=8.

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Basic Application of the Risk Function—The risk function is used to estimate the percentage of an exposed population that is likely to exhibit behaviors that would qualify as harassment (as that term is defined by the MMPA applicable to military readiness activities, such as the Navy's testing and training with MFA sonar) at a given received level of sound. For example, at 165 dB SPL (dB re: 1 μPa rms), the risk (or probability) of harassment is defined according to this function as 50 percent, and Navy/NMFS applies that by estimating that 50 percent of the individuals exposed at that received level are likely to respond by exhibiting behavior that NMFS would classify as behavioral harassment. The risk function is not applied to individual animals, only to exposed populations.

The data primarily used to produce the risk function (the K parameter) were compiled from four species that had been exposed to sound sources in a variety of different circumstances. As a result, the risk function represents a general relationship between acoustic exposures and behavioral responses that is then applied to specific circumstances. That is, the risk function represents a relationship that is deemed to be generally true, based on the limited, best-available science, but may not be true in specific circumstances. In particular, the risk function, as currently derived, treats the received level as the only variable that is relevant to a marine mammal's behavioral response. However, we know that many other variables—the marine mammal's gender, age, and prior experience; the activity it is engaged in during an exposure event, its distance from a sound source, the number of sound

sources, and whether the sound sources are approaching or moving away from the animal—can be critically important in determining whether and how a marine mammal will respond to a sound source (Southall *et al.*, 2007). The data that are currently available do not allow for incorporation of these other variables in the current risk functions; however, the risk function represents the best use of the data that are available.

As more specific and applicable data become available for MFAS/HFAS sources, NMFS can use these data to modify the outputs generated by the risk function to make them more realistic. Ultimately, data may exist to justify the use of additional, alternate, or multi-variate functions. For example, as mentioned previously, the distance from the sound source and whether it is perceived as approaching or moving away can affect the way an animal responds to a sound (Wartzok *et al.*, 2003). In the HRC example, animals exposed to received levels between 120 and 130 dB may be more than 65 nautical miles (131,651 yards (120,381 m)) from a sound source (Table 16); those distances could influence whether those animals perceive the sound source as a potential threat, and their behavioral responses to that threat. Though there are data showing marine mammal responses to sound sources at that received level, NMFS does not currently have any data that describe the response of marine mammals to sounds at that distance, much less data that compare responses to similar sound levels at varying distances (much less for MFAS/HFAS). However, if data were to become available, NMFS would re-evaluate the risk function and to incorporate any additional variables into the ''take'' estimates.

Explosive Detonation Criteria

The criteria for mortality, Level A Harassment, and Level B Harassment resulting from explosive detonations were initially developed for the Navy's Sea Wolf and Churchill ship-shock trials and have not changed since other MMPA authorizations issued for explosive detonations. The criteria, which are applied to cetaceans and pinnipeds, are summarized in Table 13. Additional information regarding the derivation of these criteria is available in the Navy's FEIS for the HRC and in the Navy's CHURCHILL FEIS (U.S. Department of the Navy, 2001c).

Criterion	Criterion Definition	Threshold
Mortality	onset of severe lung injury (1% probability of mortality)	31 psi-ms (positive impulse)
Level A Harassment (Injury)	Slight lung injury; or	13 psi-ms (positive impulse)
	50% of animals exposed would experience ear drum rupture; and 30% exposed sustain PTS	205 dB re 1 microPa^2-s (full spectrum energy)
Level B Harassment	TTS (dual criteria); or	23 psi (peak pressure) (explosives < 2,000 lbs.); or
		182 dB re 1 microPa^2-s (peak 1/3 octve band)
	Sub-TTS behavioral disruption (for multiple detonations only, not applicable for single detonations)	177 dB re 1 microPa^2-s, (1/3 octave band)

Table 13. Summary of Criteria for Explosive Detonations

Take Calculations

Estimating the take that will result from the proposed activities entails the following four steps: Propagation model estimates animals exposed to sources at different levels; further modeling determines number of exposures to levels indicated in criteria above (*i.e.*, number of takes); post-modeling corrections refine estimates to make them more accurate; mitigation is taken into consideration. More information regarding the models used, the assumptions used in the models, and the process of estimating take is available in Appendix J of the Navy's FEIS for the HRC.

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Species Name	Abundance	Density (#/km^2)	CV	Area in which densities are applied for Modeling Purposes	Seasons in which densities are applied for Modeling Purposes	Reference
Bryde's whale	469	0.0002	0.45	75-200 nm offshore	Year-round	Barlow 2006
Minke whale*	469	0.0002		0-200 nm offshore	Year-round	*
Humpback whale	4,491	0.2186	0.15	0-25 nm offshore	Dec-Mar	Mobley et al. 2001
Fin whale**	236	0.0001		0-200 nm offshore	Year-round	**
Sei whale**	236	0.0001		0-200 nm offshore	Year-round	**
Sperm whale	6,919	0.0028	0.81	0-200 nm offshore	Year-round	Barlow 2006
Dwarf sperm whale	17,519	0.0071	0.74	0-200 nm offshore	Year-round	Barlow 2006
Pygmy sperm whale	7,138	0.0029	1.12	0-200 nm offshore	Year-round	Barlow 2006
Cuvier's beaked whale	15,242	0.0062	1.43	0-200 nm offshore	Year-round	Barlow 2006
Longman's beaked whale	1,007	0.0004	1.26	75-200 nm offshore	Year-round	Barlow 2006
Blainville's beaked whale	2,872	0.0012	1.25	0-200 nm offshore	Year-round	Barlow 2006
Unidentified beaked whale	371	0.0002	1.17	0-200 nm offshore	Year-round	Barlow 2006
Bottlenose dolphin	3,215	0.0013	0.59	0-200 nm offshore	Year-round	Barlow 2006
False killer whale	236	0.0001	1.13	0-200 nm offshore	Year-round	Barlow 2006
Killer whale	349	0.0001	0.98	0-200 nm offshore	Year-round	Barlow 2006
Pygmy killer whale	956	0.0004	0.83	0-200 nm offshore	Year-round	Barlow 2006
Short-finned pilot whale	8,870	0.0036	0.38	0-200 nm offshore	Year-round	Barlow 2006
Risso's dolphin	2,372	0.001	0.65	0-200 nm offshore	Year-round	Barlow 2006
Melon-headed whale	2,950	0.0012	1.17	0-200 nm offshore	Year-round	Barlow 2006
Rough-toothed dolphin	8,709	0.0036	0.45	0-200 nm offshore	Year-round	Barlow 2006
Fraser's dolphin	10,226	0.0042	1.16	75-200 nm offshore	Year-round	Barlow 2006
Offshore pantropical spotted dolphin	8,978	0.0037	0.48	0-200 nm offshore	Year-round	Barlow 2006
Spinner dolphin	3,351	0.0014	0.74	0-200 nm offshore	Year-round	Barlow 2006
Striped dolphin	13,143	0.0054	0.46	0-200 nm offshore	Year-round	Barlow 2006
Hawaiian monk seal	1,252	0.0035	N/A	Offshore HI Island Archipelago	Year-round	Carretta et al. 2006

Table 14. Estimated densities of marine mammals in HRC.

*No density information is avaialable for Minke whales, estimate is based on density estimates for Bryde's whale

**No density information is available for fin or sei whales, estimate is based on false killer whale estimate

(1) In order to quantify the types of take described in previous sections that are predicted to result from the Navy's specified activities, the Navy first uses a sound propagation model that predicts the number of animals that will be exposed to a range of levels of pressure and energy (of the metrics used in the criteria) from MFAS/HFAS and explosive detonations based on several important pieces of information, including:

- Characteristics of the sound sources.
  - Sonar source characteristics include: Source level (with horizontal and vertical directivity corrections), source depth, center frequency, source directivity (horizontal/vertical beam width and horizontal/vertical steer direction), and ping spacing.
  - Explosive source characteristics include: The weight of an explosive, the type of explosive, the detonation depth, number of successive explosions.
- Transmission loss (in 20 representative environmental provinces across 8 sonar modeling areas) based on: Water depth; sound speed variability throughout the water column (presume surface duct is present in HRC); bottom geo-acoustic properties (bathymetry); and wind speed.
- The density of each marine mammal species in the HRC (see Table 14), horizontally distributed uniformly and vertically distributed according to dive profiles based on field data.

(2) Next, the criteria discussed in the previous section are applied to the estimated exposures to predict the number of exposures that exceed the criteria, i.e., the number of takes by Level B Harassment, Level A Harassment, and mortality.

(3) During the development of the EIS for the HRC, NMFS and the Navy determined that the output of the model could be made more realistic by applying post-modeling corrections to account for the following:

- Acoustic footprints for sonar sources must account for land masses (by subtracting them out).
- Acoustic footprints for sonar sources should not be added independently, rather, the degree to which the footprints from multiple ships participating in the same exercise would typically overlap needs to be taken into consideration.
- Acoustic modeling should account for the maximum number of individuals of a species that could potentially be exposed to sonar within the course of 1 day or a discreet continuous sonar event if less than 24 hours.

(4) Mitigation measures are taken into consideration. For example, in some cases the raw modeled numbers of exposures to levels predicted to result in Level A Harassment from exposure to sonar might indicate that 1 fin whale would be exposed to levels of sonar anticipated to result in PTS—However, a fin whale would need to be within approximately 10 m of the source vessel in order to be exposed to these levels. Because of the mitigation measures (watchstanders and shutdown zone), size of fin whales, and nature of fin whale behavior, it is highly unlikely that a fin whale would be exposed to those levels, and therefore the Navy would not request authorization for Level A Harassment of 1 fin whale. Table 15 contains the Navy's estimated take estimates.

(5) Last, the Navy's specified activities have been described based on best estimates of the number of MFAS/HFAS hours that the Navy will conduct. The exact number of hours may vary from year to year, but will not exceed the 5-year total indicated in Table 3 (by multiplying the yearly estimate by 5) by more than 10 percent. NMFS estimates that a 10-percent increase in sonar hours would result in approximately a 10 percent increase in the number of takes, and we have considered this possibility in our analysis.

	Total Estimated Exposures to Indicated Levels of Energy/Pressure from Explosive Detonations				Total Estimated Exposures to Indicated Levels of Sound from MFAS/HFAS		
	Level B Harassment		Level A Harassment	Mortality	Level B Harassment		Level A Harassment
	177 dB re 1 μPa^2-s	23 psi or 182 dB re 1 μPa^2-s	13 psi-ms / 205 dB re 1 μPa^2-s	31 psi-ms	Risk Function	195 dB re 1 μPa^2-s	215 dB re 1 μPa^2-s
Species	Behavioral Harassment	TTS (mitigation considered)	Slight Lung / TM Injury	Onset Massive Lung Injury	Behavioral Harassment	TTS (mitigation considered)	PTS
Bryde's whale	0	0	0	0	64	0	0
Fin whale	0	0	0	0	46	0	0
Sei whale	0	0	0	0	46	0	0
Minke whale	0	0	0	0	64	0	0
Humpback whale	5	12 (4)***	1 (0)	0	9,677	199 (0)*	0
Sperm whale	9	5 (4)***	0	0	758	9 (0)*	0
Dwarf sperm whale	13	13	0	0	2,061	35	0
Pygmy sperm whale	4	5	0	0	842	14	0
Cuvier's beaked whale	15	8	0	0	1,121	5	0
Longman's beaked whale	0	0	0	0	104	1	0
Blainville's beaked whale	2	2	0	0	347	6	0
Unidentified beaked whale	0	0	0	0	36	0	0
Bottlenose dolphin	0	1 (0)***	0	0	716	17 (9)*	0
False killer whale	0	0	0	0	46	0	0
Killer whale	0	0	0	0	46	0	0
Pygmy killer whale	0	0	0	0	192	4 (0)*	0
Short-finned pilot whale	2	5 (1)***	0	0	1,751	40 (0)*	0
Risso's dolphin	0	1 (0)***	0	0	486	10 (5)**	0
Melon-headed whale	0	1 (0)***	0	0	583	13 (0)*	0
Rough-toothed dolphin	2	4 (2)***	0	0	1,053	18 (9)**	0
Fraser's dolphin	6	6 (3)***	0	0	1,216	19 (10)**	0
Pantropical spotted dolphin	0	5 (0)***	1 (0)	0	2,144	49 (25)**	0
Spinner dolphin	2	2 (1)***	0	0	410	7 (4)**	0
Striped dolphin	2	7 (2)***	1 (0)	0	3,126	73 (37)**	0
Monk seal	0	3 (0)***	0	0	104	3 (0)*	0
Total	62	80 (45)	0	0	26,963	522 (160)	0

Table 15. Estimated exposures of marine mammals to indicated criteria (parenthetical numbers corrected for mitigation). Numbers indicate the number NMFS is proposing to authorize in the LOAs (not including the mortality authorization discussed in Mortality Section)

*Due to the animal size, average group size, or behavior of these species, watchstanders will very likely detect these animals and cease MFAS/HFAS operations before they are within the distance of the source that would put them at risk of TTS (120 m)

**Individuals of these species travel in group sizes that will allow for detection and shutdown prior to TTS exposure, however, they may also bow-ride and MFAS/HFAS sonar may operate if vessel attempted to change course but the animals stayed with the vessel, therefore, some TTS could occur

***As mentioned above, these animals are likely to be seen by watchstanders, and mitigation implemented, however the exclusion zone for the two largest explosive charges is not large enough to avoid all TTS, so estimated TTS takes potentially associated with those charges remain

NOTE: if calculated TTS takes are assumed not to occur because of mitigation, they are still included as a Level B behavioral harassment

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Mortality

Evidence from five beaked whale strandings, all of which have taken place outside the HRC, and have occurred over approximately a decade, suggests that the exposure of beaked whales to mid-frequency sonar in the presence of certain conditions (e.g., multiple units using tactical sonar, steep bathymetry, constricted channels, strong surface ducts, etc.) may result in strandings, potentially leading to mortality. Although these physical factors believed to contribute to the likelihood of beaked whale strandings are not present, in their aggregate, in the Hawaiian Islands, scientific uncertainty exists regarding what other factors, or combination of factors, may contribute to beaked whale strandings. Accordingly, to allow for scientific uncertainty regarding contributing causes of beaked whale strandings and the exact behavioral or physiological mechanisms that can lead to the ultimate physical effects (stranding and/or death), the Navy has requested authorization for take, by serious injury or mortality, of 10 individuals of each of the following species over the course of the five-year rule: bottlenose dolphin, *Kogia* spp., melon-headed whale, pantropical spotted dolphin, pygmy killer whale, short-finned pilot whale, striped dolphin, Cuvier's, Longman's, and Blainville's beaked whales. Neither NMFS nor the Navy anticipates that marine mammal strandings or mortality will result from the operation of mid-frequency sonar during Navy exercises within the HRC.

''Take'' Interpretation

For explosive detonations, a ''take'' (as reported in the take table and proposed to be authorized), is very simply, an instance of exposure of a marine mammal to levels above those indicated in the criteria. Every separate take does necessarily represent effects to a separate animal, some of the takes may be takes that occur to the same animal, either within one day and one exercise, or on different days from different exercise types.

For MFAS/HFAS, TTS and PTS takes can be described the same as the explosive detonation takes described above. Alternately, for behavioral harassment a take is slightly different from that described above. Within the context of exposure to continuous ASW within exercises that last less than 24 hrs (they typically last less than 16 hrs), one behavioral harassment take might include more than one exposure to MFAS/HFAS levels above those identified on the risk continuum within the 11–16-hr. Then, however, the estimated numbers of take (in the take table) represent instances of take. Again, every separate take does necessarily represent effects to a separate animal, some animals may be taken (which, as mentioned above, may include multiple exposures within one day) more than one time on different days as a result of exposure to different exercises.

Effects on Marine Mammal Habitat

There are no areas within the HRC that are specifically considered as important physical habitat for marine mammals. The nearshore areas in and around the Hawaiian Humpback Whale National Marine Sanctuary contain very important breeding and calving habitat for the humpback whale, however effects in this area have been analyzed previously in this document in the context of the whales themselves. Additionally, in 2007, the Navy only conducted sonar training in the areas where humpback whales are known to be densest for a total of approximately 30–40 hours.

The prey of marine mammals are considered part of their habitat. The Navy's FEIS for the HRC contains a detailed discussion of the potential effects to fish from MFAS/HFAS and explosive detonations. Below is a summary of conclusions regarding those effects.

Effects on Fish From MFAS/HFAS

The extent of data, and particularly scientifically peer-reviewed data, on the effects of high intensity sounds on fish is limited. In considering the available literature, the vast majority of fish species studied to date are hearing generalists and cannot hear sounds above 500 to 1,500 Hz (depending upon the species), and, therefore, behavioral effects on these species from higher frequency sounds are not likely. Moreover, even those fish species that may hear above 1.5 kHz, such as a few sciaenids and the clupeids (and relatives), have relatively poor hearing above 1.5 kHz as compared to their hearing sensitivity at lower frequencies. Therefore, even among the species that have hearing ranges that overlap with some mid- and high-frequency sounds, it is likely that the fish will only actually hear the sounds if the fish and source are very close to one another. And, finally, since the vast majority of sounds that are of biological relevance to fish are below 1 kHz (e.g., Zelick *et al.*, 1999; Ladich and Popper, 2004), even if a fish detects a mid-or high-frequency sound, these sounds will not mask detection of lower frequency biologically relevant sounds. Based on the above information, there will likely be few, if any, behavioral impacts on fish.

Alternatively, it is possible that very intense mid- and high-frequency signals, and particularly explosives, could have a physical impact on fish, resulting in damage to the swim bladder and other organ systems. However, even these kinds of effects have only been shown in a few cases in response to explosives, and only when the fish has been very close to the source. Such effects have never been indicated in response to any Navy sonar. Moreover, at greater distances (the distance clearly would depend on the intensity of the signal from the source) there appears to be little or no impact on fish, and particularly no impact on fish that do not have a swim bladder or other air bubble that would be affected by rapid pressure changes.

Effects on Fish From Explosive Detonations

Underwater detonations are possible during SINKEX, EER/IEER, A–S MISSILEX, S–S MISSILEX, BOMBEX, S–S GUNEX, and NSFS. The weapons used in most missile and Live Fire Exercises pose little risk to fish unless the fish were near the surface at the point of impact. Machine guns (50 caliber) and close-in weapons systems (anti-missile systems) fire exclusively non-explosive ammunition. The same applies to larger weapons firing inert ordnance for training (e.g., 5-inch guns and 76-mm guns). The rounds pose an extremely low risk of a direct hit and potential to directly affect a marine species. Target area clearance procedures will again reduce this risk. A SINKEX uses a variety of live fire weapons. These rounds pose a risk only at the point of impact.

Several factors determine a fish's susceptibility to harm from underwater detonations. Most injuries in fish involve damage to air-or gas-containing organs (i.e., the swim bladder). Fish with swim bladders are vulnerable to effects of explosives, while fish without swim bladders are much more resistant (Yelverton, 1981; Young, 1991). Research has focused on the effects on the swim bladder from underwater detonations but not the ears of fish (Edds-Walton and Finneran, 2006).

For underwater demolition training, the effects on fish from a given amount of explosive depend on location, season, and many other factors. O'Keeffe (1984) provides charts that allow estimation of the potential effect on swim-bladder fish using a damage prediction method developed by Goertner (1982). O'Keeffe's parameters include the size

of the fish and its location relative to the explosive source, but are independent of environmental conditions (e.g., depth of fish, explosive shot, frequency content).

Based on O'Keeffe's parameters, potential impacts on fish from underwater demolition detonations would be negligible. A small number of fish are expected to be injured by detonation of explosive, and some fish located in proximity to the initial detonations can be expected to die. However, the overall impacts on water column habitat would be localized and transient. As training begins, the natural reaction of fish in the vicinity would be to leave the area. When training events are completed, the fish stock would be expected to return to the area.

Essential Fish Habitat (EFH) Determination

EFH is defined as ''those waters and substrates necessary to fish for spawning, breeding, feeding or growth to maturity.'' Adverse effects on EFH are defined further as ''any impact that reduces the quality and/or quantity of EFH'' and may include ''site specific or habitat-wide impacts, including individual, cumulative or synergistic consequences of actions'', as well as direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. The HRC is located in an area that has been identified as essential fish habitat under the following Western Pacific Regional Fishery Management Council (WPRFMC) Fishery Management Plans (FMPs): Pelagics (eggs, larvae, juveniles, and adults), Bottomfish (eggs, larvae, juveniles, and adults), Crustaceans (eggs, larvae, juveniles, and adults), Coral Reef Ecosystem (eggs, larvae, juveniles, and adults) and Precious Corals.

The Navy does not anticipate permanent, adverse impacts on EFH components since training activities are conducted to avoid potential impacts; however, there are temporary unavoidable impacts associated with several training activities that may result in temporary and localized impacts. In addition, a single operation may potentially have multiple effects on EFH. The current and proposed training activities in the HRC have the potential to result in the following impacts:

- Physical disruption of open ocean habitat.
- Physical destruction or adverse modification of benthic habitats.
- Alteration of water or sediment quality from debris or discharge.
- Cumulative impacts.

Each impact and operation associated with those impacts are discussed in a separate document, Essential Fish Habitat and Coral Reef Assessment for the Hawaii Range Complex EIS/OEIS (U.S. Department of the Navy, 2007b) and a summary for each proposed activity is provided. Potential impacts on FMP species include direct and indirect effects from sonar and shock waves (see discussion above and EFH document, U.S. Department of the Navy, 2007a). Numerous training activities may affect benthic habitats from debris, and there may also be temporary impacts on water quality from increased turbidity or release of materials. However, due to the mitigation measures implemented to protect sensitive habitats, and the localized and temporary impacts of the Proposed Action, the Navy concluded that the potential impact of the Proposed Action and alternatives on EFH for the five major FMPs and their associated management units would be minimal. Additional detail is provided in the Navy's FEIS on effects on EFH.

NMFS reviewed the Navy's Essential Fish Habitat and Coral Reef Assessment for the Hawaii Range Complex EIS/OEIS (2007) in accordance with the Fish and Wildlife Coordination Act (16 U.S.C. Section 662(a)), the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. Section 1855(b)(2)), the Coral Reef Executive Order 13089, and NMFS'' essential fish habitat (EFH) regulations (50 CFR 600.905–930).

The Navy proposed the following mitigation measures to minimize impacts to EFH: conducting training activities in open ocean away from sensitive EFH, avoiding areas of live coral during inshore training activities, and restricting amphibious landing to specific areas of designated beaches. NMFS concurred that it is unlikely that the proposed project would have adverse impacts to EFH for the various WPRFMC FMPs, provided the proposed mitigation measures were implemented to protect EFH in the area of operation.

Analysis and Negligible Impact Determination

Pursuant to NMFS regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects (for example: pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46 percent reproductive success compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and has a 17 percent reproductive success). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat. Generally speaking, and especially with other factors being equal, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels.

The Navy's specified activities have been described based on best estimates of the number of MFAS/HFAS hours that the Navy will conduct. The exact number of hours may vary from year to year, but will not exceed the 5-year total indicated in Table 3 (by multiplying the yearly estimate by 5) by more than 10 percent. NMFS estimates that a 10 percent increase in sonar hours would result in approximately a 10 percent increase in the number of takes, and we have considered this possibility in our analysis.

Taking the above into account, and considering the sections discussed below, NMFS has preliminarily determined that Navy training exercises utilizing MFAS/HFAS and underwater detonations will have a negligible

impact on the marine mammal species and stocks present in the HRC.

Behavioral Harassment

As discussed in the Potential Effects of Exposure of Marine Mammals to MFAS/HFAS and Underwater Detonations Section and illustrated in the conceptual framework (Figure 2), marine mammals can respond to MFAS/HFAS in many different ways, a subset of which qualify as harassment (see Behavioral Harassment Section). One thing that the take estimates do not take into account is the fact that most marine mammals will likely avoid the source to one extent or another. Although an animal that avoids the sound source might still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, etc.) in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response. For MFAS/HFAS, the Navy provided information (Table 16) estimating what percentage of the total takes occur within the 10-dB bins (without considering mitigation or avoidance) that are within the received levels considered in the risk continuum and for TTS and PTS. As mentioned above, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to adversely affect the health of the animal.

Received Level (SPL)	Approximate Distance at which Levels Occur in HRC	Percent of Total Harassment Takes Estimated to Occur at Indicated Level
Below 140 dB	36 km – 125 km	<1%
140 < Level < 150 dB	15 km – 36 km	2%
150 < Level < 160 dB	5 km – 15 km	20%
160 < Level < 170 dB	2 km – 5 km	40%
170 < Level < 180 dB	0.6 – 2 km	24%
180 < Level < 190 dB	180 – 560 meters	9%
Above 190 dB	0 – 180 meters	2%
TTS (195 dB EFDL)	0 - 110 meters	2%
PTS (215 dB EFDL)	0 - 10	<1%

Table 16. Approximate percent of estimated takes that occur in the indicated 10-dB bins

Because the Navy has only been monitoring specifically to discern the effects of MFAS/HFAS on marine mammals since 2006, and because of the overall datagap regarding the effects MFAS/HFAS on marine mammals, not a lot is known regarding, specifically, how marine mammals in the Hawaiian Islands will respond to MFAS/HFAS. For the five MTEs for which NMFS has received a monitoring report, no instances of obvious behavioral disturbance were observed either by the Navy watchstanders or the independent observers (and a portion of the independent observations were reported within the vicinity of operating MFAS) in the 1,200+ hours of effort in which 77 sightings of marine mammals were made. One cannot conclude from these results that marine mammals were not harassed from MFAS/HFAS, as certainly a portion of animals within the area of concern were not seen (especially those more cryptic deep-diving species, such as beaked whales or Kogia sp.) and some of the non-biologist watchstanders might not be well-qualified to characterize behaviors. However, one can say that the animals that were observed, which in the case of the watchstanders observations were the ones closest to the source and likely exposed to the highest levels, did not respond in any of the obviously more severe ways, such as panic, aggression, or anti-predator response.

In addition to the monitoring that will be required pursuant to this LOA, which is specifically designed to help us better understand how marine mammals respond to sound, the Navy and NMFS have developed, funded, and begun conducting a controlled exposure experiment with beaked whales in the Bahamas.

Diel Cycle

As noted previously, many animals perform vital functions, such as feeding, resting, traveling, and socializing, a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007).

In the previous section, we discussed the fact that potential behavioral responses to MFAS/HFAS that fall into the category of harassment could range in severity. By definition, the takes by behavioral harassment involve the disturbance of a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns (such as migration, surfacing, nursing, breeding, feeding, or sheltering) to a point where such behavioral patterns are abandoned or significantly altered. These reactions would, however, be more of a concern if they were expected to last over 24 hours or be repeated in subsequent days, which is not expected. Because of the need to train in a large variety of situations, the Navy does not typically conduct successive MTEs or other ASW exercises in the same locations (with the exception of the Navy's permanent instrumented ranges, such as PMRF located off Kaui). Within one multi-day exercise, the participants could potentially stay in one general area for multiple days, but the area would typically cover something like 5000 mi^2. Separately, the average length of ASW

exercises (times of continuous sonar use) is approximately 12–16 hours and the vessels involved are typically moving at a speed of 10–12 knots. When this is combined with the fact that the majority of the cetaceans in the HRC would not likely remain in an area for successive days (especially an area in waters deeper than 2000 m, which is where the majority of the exercises take place), it is unlikely that animal would be exposed to MFAS/HFAS at levels likely to result in a substantive response that would then be carried on for more than one day or on successive days.

TTS

NMFS and the Navy have estimated that individuals of a few species of marine mammals may sustain some level of TTS (from MFAS or explosives). As mentioned previously, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths. Table 15 indicates the estimated number of animals that might sustain TTS from exposure to MFAS or explosives (fewer are likely to have TTS from explosives). TTS is primarily classified by three characteristics:

• Frequency—Available data (of mid-frequency hearing specialists exposed to mid to high frequency sounds—Southall *et al.*, 2007) suggest that most TTS occurs in the frequency of the source up to one octave higher than the source (with the maximum at ½ octave above). The two hull-mounted MFAS sources (from which the TTS was modeled) have center frequencies of 3.5 and 7.5 kHz, which suggests that TTS induced by either of these sources would be in a frequency band somewhere between approximately 2 and 20 kHz. Tables 17a and b summarize the vocalization data for each species.

• Degree of the shift (i.e., how many dB is the sensitivity of the hearing reduced by)—generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS (> 6 dB) is 195 (SEL), which might be received at distances of up to 120 m from the MFAS source. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the watchstanders and the nominal speed of a sonar vessel (15 knots). Of all TTS studies, some using exposures of almost an hour in duration or up to 217 SEL, most of the TTS induced was 15 dB or less, though Finneran *et al.*, (2007) induced 43 dB of TTS with a 64-sec exposure to a 20 kHZ source (MFAS only pings 2 times/minute).

• Duration of TTS (Recovery time)—see above. Of all TTS laboratory studies, some using exposures of almost an hour in duration or up to 217 SEL, almost all recovered within in 1 day (or less, often in minutes), though in one study (Finneran *et al.*, (2007)), recovery took 4 days.

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	Signal Type	Frequency Range (kHz)	Frequency Near Max energy (kHz)	Source Level (dB re 1 μPa)
Bryde's Whale	moans	0.07 - 0.245	0.124 - 0.132	152-174
	pulsed moans	0.1 - 0.93	0.165 - 0.9	
	discrete pulses	0.7 - 0.95	0.7 - 0.9	
Fin whale	moans	0.016 - 0.75	0.02	160-190
	pulses	0.04 - 0.075 / 0.018 - 0.025	~ / 0.020	
	ragged pulse	< 0.030		
	rumbles	~ / 0.010 - 0.030	< 0.030 / ~	
	moans, downsweeps	0.014 - 0.118	0.02	160-186
	constant call	0.02 - 0.04		
	moans, tones, upsweeps	0.03 - 0.75		155-165
	whistles, chirps	1.5 - 5		
	clicks	16 - 28		
	vocal sequence, ♂ only	0.015 - 0.03		
Sei whale	FM sweeps	1.5 - 3.5		
	growls and whooshes	0.433		156
Minke Whale	sweeps, moans	0.06 - 0.14		151-175
	down sweeps	0.06 - 0.13		165
	moans, grunts	0.06 - 0.14	0.06 - 0.14	151-175
	ratchet	0.850 - 6	0.85	
	thump trains	0.1 - 2	0.1 - 0.2	
	speed up pulse train	0.2 - 0.4		
	slow down pulse train	0.25 - 0.35		
	Star Wars vocalization	0.05 - 9.4		150-165
	Breeding Boings (pulse then amp-mod. call)	1.3 - 1.4		
Humpback Whale	songs	0.03 - 8	0.1 - 4	144-186
	social	0.05 - 10	< 3	
	shrieks		0.75 - 1.8	179-181
	horn blasts		0.41 - 0.42	181-185
	moans	0.02 - 1.8	0.035 - 0.36	175
	grunts	0.025 - 1.9		190
	pulse trains	0.025 - 1.25	0.025 - 0.080	179-181
	slap	0.03 - 1.2		183-192
	feeding calls	0.02 - 2	0.5	175-192
Humpback Calf	simple vocalization	0.14 - 4	0.22 (mean)	

Table 17a. Summary of mysticete vocalization information compiled from The Biology of Marine Mammals (Reynolds and Rommel (eds), 1999) and the Navy's FEIS - see those documents for specific references

	Signal Type	Frequency Range (kHz)	Frequency Near Max energy (kHz)	Source Level (dB re 1 μPa)
Sperm Whale	clicks	0.1 - 30	2 - 4, 10 - 16	160-180
	clicks in coda	16- 30		
Sperm whale calf			0.3 - 1.7	140-162
False killer whale	whistles		4 - 9.5	
	click		25 -30, 95 - 130	220-228
Pygmy killer whale	clicks	45 - 117	70 - 85	197-223
Short-finned pilot w.	whistles	0.5 - > 20	2 to 14	180
	click		30 - 60	180
Melon-headed w.	whistles	8 to 12		155
	clicks	20 - 40		165
Blainville' beaked w.	whistles, chirps	< 1 - 6		
	whistles	2.6 - 10.7		
	echolocation clicks	20 - 40		
Cuvier's beaked w.	echolocation clicks	20 - 70		
Longman's beaked w.				
Pygmy sperm whale	clicks	60 - 200	120	
Dwarf sperm whale				
Rough-toothed d.	whistles		4 to 7	
	echolocation clicks	0.1 - 200	25	
	whistles	0.3 - 24		
Risso's dolphin	whistles		3.5 - 4.5	
	rasp / pulse burst	0.1 - > 8	2 to 5	
	click		65	~120
	whistles	4 to 22		
	broadband clicks	6 - > 22		
	narrowband grunts	0.4 - 0.8		
	echolocation clicks	30 -50, 80 -100		up to 216
Risso's d. infant				
Bottlenose Dolphin	whistles	0.8 - 24	3.5 - 14.5	125-173
	whistle	4 to 20		
	click	0.2 - 150	30 -60	
	click		110 - 130	218-228
	bark	0.2 - 16		
Pantrop spotted d.	whistles	3.1 - 21.4	6.7 - 17.8	
	pulse	up to 150		
	clicks	40 -140		197-220
Spinner dolphin	whistles	1 to 20	8 to 12	
	echolocation clicks	up to 65		
	click	1 - 160	60	
Striped dolphin	whistles	1 - 22.5	6.8 - 16.9	109-125
	whistles	6 to 24	8 - 125	
	pulse bursts		May-60	108-115
Fraser's dolphin	whistles	7.6 - 13.4		
Killer whale	whistles	1.5 - 18	6 to 12	
	clicks	0.1 - 35 / 0.25 - 0.5	12 to 25 / ~	0.18 / ~
	scream	2		
	pulsed calls	0.5 - 25	1 to 6	160

Table 17b. Summary of odontocete vocalization information compiled from The Biology of Marine Mammals (Reynolds and Rommel (eds), 1999) the Navy's FEIS - see those documents for specific references

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Based on the range of degree and duration of TTS reportedly induced by exposures to non-pulse sounds of energy higher than that to which free-swimming marine mammals in the field are likely to be exposed during MFAS/HFAS training exercises, it is unlikely that marine mammals would sustain a TTS from MFAS that alters their sensitivity by more than 20 dB for more than a few days (and the majority would be far less severe). Additionally (see Tables 17a and 17b), though the frequency range of TTS that marine mammals might sustain would overlap with some of their vocalization types, this frequency range of TTS would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations. It is worth noting that TTS from MFAS could potentially result in reduced sensitivity to the vocalizations of killer whales (potential predators). However, if impaired, marine mammals would typically be aware of their impairment and implement behaviors to compensate for it (see Communication Impairment Section).

Acoustic Masking or Communication Impairment

Table 17 is also informative regarding the nature of the masking or communication impairment that could potentially occur from MFAS (again, center frequencies are 3.5 and 7.5 kHz). However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. MFAS/HFAS pings last for about one second and occur about once every 24–30 seconds for hull-mounted sources. Though some of the vocalizations that marine mammals make are less than one second long, there is only a 1 in 24 chance that they would occur exactly when the ping was received, and when vocalizations are longer than one second, only parts of them are masked. Masking effects from MFAS/HFAS are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of MFAS, which overlaps with some marine mammal vocalizations, however, it would likely not mask the entirety of any particular vocalization or communication series because of the pulse length and duty cycle of the MFAS signal.

PTS, Injury, or Mortality

No animals were predicted (through modeling) to be exposed to levels of MFAS/HFAS that would result in direct physical injury. Further, NMFS believes that many marine mammals would deliberately avoid exposing themselves to the received necessary to induce injury levels (i.e., approaching to within approximately 10 m (10.9 yd) (of the source) by moving away from or at least modifying their path to avoid a close approach. Last, in the unlikely event that an animal approaches the sonar vessel at a close distance, NMFS believes that the mitigation measures (i.e., shutdown/powerdown zones for MFAS/HFA) further ensure that animals would be not be exposed to injurious levels of sound. The Navy has indicated that they are capable of effectively monitoring a 1000-meter (1093-yd) safety zone at night using night vision goggles, infrared cameras, and passive acoustic monitoring.

The Navy's model estimated that 3 animals (one humpback whale, one spotted dolphin, and one striped dolphin) would be exposed to explosive detonations at levels that would result in injury—however, those estimates do not consider mitigation measures. Surveillance during the exercises for which injury was estimated (which includes aerial and passive acoustic detection methods, when available, to ensure clearance) begins two hours before the exercise and extends to 2 nm (3704 m) from the source. Because of the behavior and visibility of these species and the two hours of monitoring that occurs prior to detonation, NMFS does not think that any animals will be exposed to levels of sound or pressure that will result in injury from explosive detonations.

As discussed previously, marine mammals could potentially respond to MFAS at a received level lower than the injury threshold in a manner that indirectly results in the animals stranding. The exact mechanisms, behavioral or physiological are not known. However, based on the number of occurrences where strandings have been definitively associated with military sonar versus the number of hours of sonar that have been conducted, we suggest that the probability is small that this will occur. Additionally, proposed monitoring of shorelines before and after major exercises combined with a shutdown protocol for live, in water, strandings minimize the chances that live milling events turn into mortalities.

Though NMFS does not expect it to occur, because of the uncertainty surrounding the mechanisms that link exposure to MFAS to stranding (especially in beaked whales), NMFS is proposing to authorize the injury or mortality of 10 total individuals of each of these species each over the course of the 5-yr rule: bottlenose dolphin, *Kogia* spp., melon-headed whale, pantropical spotted dolphin, pygmy killer whale, short-finned pilot whale, striped dolphin, and Cuvier's, Longman's, and Blainville's beaked whale.

Resident Populations/Additional Management Units

Studies of several odontocete species within the HRC suggest demographically isolated populations might exist within the EEZ and that some species show site-fidelity. Though only one stock is designated for the HRC, both genetic testing and analysis of movement suggest that a demographically isolated inshore population of false killer whales exists within the Hawaiian EEZ and that individuals from the offshore (genetically separate) Eastern North Pacific population are also seen regularly within the Hawaii EEZ. Results from Baird *et al.'s*, (in press) analysis of interisland movements of bottlenose dolphins suggest that within the main Hawaiian Islands there are as many as four discrete populations corresponding to the four main island groupings (Nihau/Kaui, Oahu, 4-island:Molokai/Lanai/Maui/Kaho'olawe, Hawaii). McSweeney *et al.* (2007) analyzed a 21-yr photographic record of Cuvier's and Blainville's beaked whales and found evidence of long-term (15-yr), multi-season site-fidelity on the west side of Hawaii.

If the nature of the Navy's training exercises was such that they were disproportionately conducting sonar in a certain fairly large area that largely overlapped with a particular demographically isolated population, stock, or resident population, additional analysis might be needed to determine what additional impacts might occur. However, due to the Navy's need to train in a variety of bathymetric conditions and in the vicinity of a variety of other resources throughout the Main Hawaiian Islands, the location of the Navy's training exercises are highly variable, with the exception of the Navy's ranges (PMRF, etc.).

40 Years of Navy Training Exercises Using MFAS/HFAS in the HRC

The Navy has been conducting MFAS/HFAS training exercises in the HRC for over 40 years. During this time, NMFS found that sonar was a plausible, if not likely, contributor to one milling/stranding event that occurred in Hanalei Bay (see Stranding section: Hanalei), though the cause of the event was not definitively determined. Though monitoring specifically to determine the effects of sonar on marine mammals was

not being conducted prior to 2006 and the symptoms indicative of potential acoustic trauma were not as well recognized prior to the mid-nineties, people have been collecting stranding data in Hawaii for 25 years. Though not all dead or injured animals are expected to end up on the shore (some may be eaten or float out to sea), one might expect that if marine mammals were being harmed by sonar with any regularity, more evidence would have been detected over the 40-yr period. Similarly, though population trends are not available for the vast majority of the cetacean stocks in the HRC, data indicate that humpback whale numbers are generally increasing both in Hawaii (7 percent rate of increase between 1993 and 2007: Mobley, 2004) and in Southeast Alaska (Caretta *et al.*, 2007), where the majority of the Hawaii humpback whales feed over the summer.

Species Conclusions

Mysticetes (Except Humpback Whale)

Bryde's whales, fin whales, sei whales, and Minke whales are not expected to be encountered very often in the HRC. 64 instances each of behavioral harassment of Bryde's and Minke whales, and 46 instances each of behavioral harassment of fin and sei whales are estimated to result from exposure to MFAS/HFAS (though this number does not take the potential avoidance of the sound source into consideration). When the numbers of behavioral takes are compared to the estimated abundance and if one assumes that each ''take'' happens to a separate animal, less than 20 percent of each of these Hawaiian stocks would be behaviorally harassed during the course of a year (each animal one time per year). No areas of specific importance for reproduction or feeding for these species have been identified in the HRC.

The modeling indicates that these species will not be exposed to levels associated with TTS or any type of injury as a result of the Navy's action. Further, NMFS believes that many marine mammals would avoid exposing themselves to the received levels necessary to induce injury (i.e., avoid getting as close to the vessel as they would need to: within approximately 10 m) by moving away from or at least modifying their path to avoid a close approach. Last, NMFS believes that the mitigation measures, including range clearance procedures for explosives and shutdown/exclusion zones for MFAS/HFAS and explosives would be effective at avoiding injurious exposures to animals that approach the safety zone, especially in the case of these large animals.

Sperm Whales

The modeling estimates that 767 instances of sperm whale behavioral harassment will occur as a result of MFAS/HFAS training (758—though this number does not take the potential avoidance of the sound source into consideration) or underwater detonations (9). When the numbers of behavioral takes are compared to the estimated abundance and if one assumes that each ''take'' happens to a separate animal (and each animal one time per year), less than 11 percent of the sperm whale stock would be behaviorally harassed during the course of a year. More likely, slightly fewer animals are harassed and a subset are taken more than one time per year. No areas of specific importance for reproduction or feeding for sperm whales have been identified in the HRC.

The Navy's model predicted that 9 sperm whales might be exposed to received levels of MFAS expected to cause TTS. However, due to the large size of an individual, large average group size, and pronounced blow of the sperm whale and the distance within which TTS levels are expected to occur, watchstanders will very likely detect these whales in time to shut down and prevent their exposures to levels of MFAS associated with TTS.

The model also predicted that some animals might experience TTS as a result of exposure to explosive detonations. For the same reasons listed above, NMFS anticipates that the Navy watchstanders would detect these species and implement the mitigation to avoid exposure. However, two of the largest explosives (MK–84s and MK–48s) used in the training exercises have a range to TTS that is larger than the exclusion zone (see Table 8), which means that in the types of exercises that utilize these explosives, it is possible that animals could experience TTS as a result of being exposed beyond 1 nm (1.9 km) from the explosion. Therefore, we estimate TTS could still occur incidental to exercise types that utilize the two largest explosive types these explosives (the Navy provided NMFS with take estimates broken down to the exercise level), which results in an estimate of 4 sperm whales taken by TTS from explosive detonations.

The modeling indicates that sperm whales will not be exposed to levels associated with any type of injury or death as a result of the Navy's action. Further, NMFS believes that many marine mammals would deliberately avoid exposing themselves to MFAS/HFAS at the received levels necessary to induce injury (and avoid getting as close to the vessel as they would need to: within approximately 10 m (10.9 yd)) by moving away from or at least modifying their path to avoid a close approach. Last, NMFS believes that the mitigation measures would be effective at avoiding injurious exposures to animal that approached within the safety zone, especially in the case of these large animals.

Cryptic, Deep Diving Species

The modeling predicts that the following numbers of behavioral harassments (Level B Harassment) of the associated species will occur: 2074 (dwarf sperm whales), 846 (pygmy sperm whales), 1136 (Cuvier's beaked whales), 104 (Longmans's beaked whales), and 349 (Blainvilles beaked whales). When the numbers of behavioral takes are compared to the estimated abundance and if one assumes that each ''take'' happens to a separate animal (one time per year), less than 13 percent of each of these stocks would be behaviorally harassed during the course of a year. More likely, fewer individuals would be taken, but a subset would be taken more than one time per year. No areas of specific importance for reproduction or feeding for these species have been identified in the HRC.

The Navy's model predicted that the following number of each of the species would sustain TTS (Level B Harassment) from exposure to MFAS: 35 (dwarf sperm whales), 14 (pygmy sperm whales), 5 (Cuvier's beaked whales), 1 (Longmans's beaked whales), and 6 (Blainvilles beaked whales). Though some of these predicted takes might be avoided if the animals avoided the source or if they were sighted by the watchstanders, because the species are all deep divers that are cryptic at the surface, we will assume that they actually sustain the TTS takes that are modeled. As mentioned above, some beaked whale vocalizations might overlap with the MFAS/HFAS TTS frequency range (2–20 kHz), but the limited information for *Kogia* sp. indicates that their echolocation clicks are at a much higher frequency and that their maximum hearing sensitivity is between 90 and 150 kHz. It is worth noting that TTS in the range induced by MFAS would reduce sensitivity in the band that killer whales click and echolocate in. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFA/HFAS. The model also predicted TTS takes from explosive detonations: 13 (dwarf sperm whales), 5 (pygmy sperm

whales), 8 (Cuvier's beaked whales), and 2 (Blainvilles beaked whales).

The modeling indicates that none of these species would be injured as a result of the Navy's action. Further, NMFS believes that many marine mammals would deliberately avoid exposing themselves to the received MFAS/HFAS levels necessary to induce injury (and avoid getting as close to the vessel as they would need to: within approximately 10 m (10.9 yd)) by moving away from or at least modifying their path to avoid a close approach. Last, NMFS believes that the mitigation measures would be effective at avoiding injurious exposures (which would only occur within approximately 10 m (10.9 yd) of the vessel) if an animal did happen to approach that closely.

Although NMFS does not expect mortality of any of these five species to occur as a result of the MFAS/HFAS training exercises (see Mortality paragraph above), because we intend to authorize mortality, we consider the 10 potential mortalities of each of these species over the course of 5 years in our negligible impact determination.

Social Pelagic Species

The modeling predicts that the following numbers of behavioral harassments of the associated species will occur: 46 (false killer whales), 46 (killer whales), 192 (Pygmy killer whales), 1753 (short-finned pilot whales), and 583 (melon-headed whales). When the numbers of behavioral takes are compared to the estimated abundance and if one assumes that each ''take'' happens to a separate animal, less than 22 percent of each of these stocks would be behaviorally harassed during the course of a year (one time per animal). More likely, fewer individuals would be taken and a small subset would be harassed more than one time per year. No areas of specific importance for reproduction or feeding for these species have been identified in the HRC.

The Navy's model predicted that these species might be exposed to received levels of MFAS expected to cause TTS. However, because of the average group size, large animal size, and the distance from the vessel in which TTS levels are expected to occur (120–160m), watchstanders will very likely detect these whales in time to shut down and prevent their exposures to levels of MFAS associated with TTS. The model also predicted that melon-headed whales and short-finned pilot whales might experience TTS as a result of explosive detonations. For the same reasons listed above, NMFS anticipates that the Navy watchstanders would detect these species and implement the mitigation to avoid exposure. However, two of the largest explosives (MK–84s and MK–48s) used in the training exercises have a range to TTS that is larger than the exclusion zone (see Table 8), which means that in the types of exercises that utilize these explosives, it is possible that animals could experience TTS as a result of being exposed beyond 1 nm from the explosion. Therefore, we estimate TTS takes could still occur incidental to exercise types that utilize two largest explosive types (the Navy provided NMFS with take estimates broken down to the exercise level), which results in the following estimates of take from explosive detonations: 1 short-finned pilot whale.

As mentioned previously, TTS from MFAS is anticipated to occur primarily in the 2–20 kHz range. If any individuals of these species were to experience TTS from MFAS/HFAS, the information in Table 7 indicates that the TTS would likely overlap with some of the vocalizations of conspecifics, and not with others. However, as noted previously, NMFS does not anticipate TTS of a long duration or severe degree to occur as a result of exposure to MFA/HFAS.

The modeling indicates that none of these species would be injured as a result of the Navy's action. Further, NMFS believes that many marine mammals would deliberately avoid exposing themselves to the received levels necessary to induce injury (and avoid getting as close to the vessel as they would need to: Within approximately 10 m (10.9 yd)) by moving away from or at least modifying their path to avoid a close approach. Last, NMFS believes that the mitigation measures would be effective at avoiding injurious exposures (which would only occur within approximately 10 m (10.9 yd) of the vessel) if an animal did happen to approach that closely.

Although NMFS does not expect mortality of any of these three species to occur as a result of the MFAS/HFAS training exercises (see Mortality paragraph above), because we intend to authorize mortality, we consider the 10 total potential mortalities (over the course of 5 years) of melon-headed whales, pygmy killer whales, and short-finned pilot whales in our negligible impact determination.

Dolphins

The modeling predicts that the following numbers of behavioral harassments of the associated species will occur: 716 (bottlenose dolphins), 486 (Risso's dolphins), 1055 (rough-toothed dolphin), 1222 (Fraser's dolphin), and 2144 (pantropical spotted dolphin), 412 (spinner dolphin), and 3128 (striped dolphin). When the numbers of behavioral takes are compared to the estimated abundance and if one assumes that each ''take'' happens to a separate animal (one time per year), 12–24 percent of each of these stocks would be behaviorally harassed during the course of a year. More likely, slightly fewer individuals are harassed, but a subset are harassed more than one time during the course of the year. No areas of specific importance for reproduction or feeding for these species have been identified in the HRC, though several bays have been identified as important resting areas for spinner dolphins (the Navy conducts the majority of exercises in water deeper than 2000 m).

The Navy's model predicted that a certain number of individuals of these dolphin species would sustain TTS as a result of exposure to MFAS. Though the group size and behavior of these species makes it likely that watchstanders would detect them and implement shutdown if appropriate, the proposed mitigation has a provision that allows them to continue operation of MFAS if the animals are clearly bow-riding even after the Navy has initially maneuvered to try and avoid closing with the animals. Since these animals sometimes bow-ride and they would be close enough to sustain TTS, we estimate that half of the number of animals modeled for MFAS/HFAS TTS might actually sustain TTS: 9 (bottlenose dolphins), 5 (Risso's dolphins), 9 (rough-toothed dolphin), 10 (Fraser's dolphin), and 25 (pantropical spotted dolphin), 4 (spinner dolphin), and 37 (striped dolphin). As mentioned above, many of the recorded dolphin vocalizations overlap with the MFAS/HFAS TTS frequency range (2–20kHz), however, as noted above, NMFS does not anticipate TTS of a serious degree or extended duration to occur. It is worth noting that TTS is in the range induced by MFAS would reduce sensitivity in the band that killer whales click and echolocate in.

The model also predicted that individuals of this species would experience TTS from explosives. For the same reasons listed above, NMFS anticipates that the Navy watchstanders would detect these species and implement the mitigation to avoid exposure. However, as mentioned in the Social Pelagic Section, the range to TTS for the two largest explosives is larger than the exclusion zone (see Table 8), and therefore NMFS anticipates that TTS might not be entirely avoided

during those exercises, which results in the following predicted TTS takes from explosives: 2 (rough-toothed dolphin), 3 (Fraser's dolphin), 1 (spinner dolphin), and 2 (striped dolphin).

The modeling indicates that none of these species would be injured as a result of exposure to MFAS/HFAS. Further, NMFS believes that many marine mammals would deliberately avoid exposing themselves to the received levels necessary to induce injury (and avoid getting as close to the vessel as they would need to: within approximately 10 m (10.9 yd)) by moving away from or at least modifying their path to avoid a close approach. Last, NMFS believes that the mitigation measures would be effective at avoiding injurious exposures (which would only occur within approximately 10 m (10.9 yd) of the vessel) if an animal did happen to approach that closely.

The model predicted that one pantropical spotted dolphin and one striped dolphin would be exposed to injurious levels of energy or pressure from an explosive detonation. However, as stated previously, the relatively small area in which an animal would have to be to be injured (12–1023 m) and the visibility of these species, coupled with the 1862-m (2036-yd) exclusion zone (no explosives detonated if animals are in there), which is surveyed up to 2 hours in advance of the exercise by vessel-based observers, as well as aerial and passive acoustic means (when available), support the determination that individuals of these species will not likely be injured by explosive detonations.

Although NMFS does not expect mortality of any of these species to occur as a result of the MFAS/HFAS training exercises (see Mortality paragraph above), because we intend to authorize mortality, we must consider the 10 total potential mortalities (over the course of 5 years) of bottlenose dolphin, pantropical spotted dolphins, and striped dolphins in our negligible impact determination.

Monk Seals

The modeling predicts 104 instances of behavioral harassments of monk seals. When the number of behavioral takes is compared to the estimated abundance and if one assumes that each ''take'' happens to a separate animal, approximately 8.3 percent of the stock would be behaviorally harassed during the course of a year. More likely, a smaller number of individuals would be harassed, and a subset would be harassed more than one time. More than likely, also, the 77 animals that reside in the main Hawaiian Islands would be the animals harassed. No areas of specific importance for reproduction or feeding for these species have been identified in waters of the HRC.

The Navy's model predicted that monk seals might be exposed to received levels of MFAS expected to cause TTS 3 times. Monk seals generally forage at depths of less than 100 m (109 yd), but occasionally dive to depths of over 500 m (546 yd). The majority of ASW training in the HRC, however, takes place in waters 4 to 8 times deeper than even this known (500-m (546-yd)) maximum and it is very rare for ASW training to take place in waters as shallow as 100 m (109 yd) in depth. So, generally, monk seals are less likely to be in the vicinity of ASW activities, and we believe that watchstanders are likely to spot the seals before they could close within the distance necessary to sustain TTS, which would be less than 100 m (109 yd). For these reasons we do not believe that any monk seals will experience TTS.

The Navy's model also predicted that 3 monk seals might be exposed to explosive levels that would result in the TTS. However, because of the likelihood of spotting these animals within the distance necessary to avoid TTS and implementing the exclusion zone (i.e., not detonating explosives) and the fact that the TTS takes that were modeled were not incidental to exercises using the two largest explosives, NMFS does not anticipate that any monk seals will experience TTS.

The model-estimates that individuals of this species would not be injured as a result of the Navy's action. Further, NMFS believes that monk seals would deliberately avoid exposing themselves to the received levels necessary to induce injury (and avoid getting as close to the vessel as they would need to: within approximately 10 m (10.9 yd)) by moving away from or at least modifying their path to avoid a close approach. Last, NMFS believes that the mitigation measures would be effective at avoiding injurious exposures (which would only occur within approximately 10 m (10.9 yd) of the vessel) if an animal did happen to approach that closely.

Humpback Whales

The modeling estimates that 9,682 instances of humpback whale behavioral harassment would occur as a result of Navy training. This may be an overestimate. The Hawaiian Humpback Whale National Marine Sanctuary worked with Dr. Joe Mobley to compile a figure that illustrates 10 years worth of humpback density data (Figure 2). This map generally shows the distribution of humpbacks throughout the Main Hawaiian Islands over 10 years and clearly depicts several ''hot spots'' where the density (on average—over 4 surveys) far exceeds the density elsewhere in the HRC (high density areas are up to 3.8 animals/square mile (Mobley, pers. comm)). However, the Navy applied a uniform distribution of humpback whales within 25 km (46.3 nm) of shore to estimate take in their model. Additionally, the Navy has indicated that, historically, they have conducted a very small amount of MFAS/HFAS transmissions in the dense humpback areas (they estimate approximately 30 hours of hull-mounted sonar were conducted in these areas in 2007), although they cannot commit to any particular levels of MFAS/HFAS use in the areas in the future because of the need for flexibility in training (every area has different characteristics and exercise participants need to be exposed to a large variety of training scenarios).

As described in the monk seal section, the Navy has indicated that the majority of ASW training in the HRC takes place in waters 2000–4000 m (2187–4374 yd) deep and it is very rare for ASW training to take place in waters as shallow as 100 m (109 yd) in depth. Based on the bathymetry of the islands and the map of the densest areas of humpbacks, this means that the majority of the exercises are 2–15 km (1–8 nm), or farther, out from the densest areas of humpbacks, which would suggest, based on table 16, that the majority of behavioral takes of humpbacks would occur at received levels less than 150–160 dB. This suggests that the overall potential severity of the effects is likely less than one would anticipate if humpbacks were not selectively using the shallower, inshore areas and the Navy were not conducting the majority of their exercises in deeper areas. Additionally, the Navy has designated a cautionary area in the Maui Basin (see Mitigation) which the Navy recognizes as an area of importance to humpback whales. As noted above, the Navy has agreed that training exercises in the humpback whale cautionary area will require a much higher level of clearance than is normal practice in planning and conducting MFA sonar training. Any determination by the Commander, Pacific Fleet, to conduct training exercises in the cautionary area will be based on the unique characteristics of the area from a military readiness perspective, taking into account the importance of the area for humpback whales. The model results suggest that each humpback whale in the HRC may be harassed somewhere between

approximately 1 and 3 times per year, though more than likely some will not be harassed at all and a subset will be harassed more than 3 times/year. However, as mentioned previously, the estimated takes do not factor in the fact that a portion of the animals will likely avoid the sound to some degree.

The Navy's model predicted that 199 humpback whales might be exposed to received levels of MFAS expected to cause TTS. However, due to the large size and social behavior of humpback whales and the distance within which TTS levels are expected to occur, watchstanders will very likely detect these whales in time to shut down and prevent their exposures to levels of MFAS associated with TTS. If TTS were to occur in some humpbacks, desensitization at the frequencies of humpback vocalizations could occur due to the MFAS/HFAS TTS frequency range (2–20 kHz), however, as noted above, NMFS does not anticipate TTS of serious degree or extended duration to occur. Additionally of note, recent measurements of humpback whale calf calls, which were measured at frequencies of 140Hz to 4 kHz, with a mean frequency of 220 Hz, suggest that if a humpback did have TTS from MFAS exposure, it would not overlap with the majority of the range of the call that a calf might make, suggesting that the temporary impairment would not increase the risk of cow/calf separation.

The model also predicted that TTS takes from explosives that might occur. For the same reasons listed above, NMFS anticipates that the Navy watchstanders would detect these species and implement the mitigation to avoid exposure. However, as mentioned in the Social Pelagic Section, the range to TTS for the two largest explosives is larger than the exclusion zone (see Table 8), and therefore NMFS anticipates that TTS might not be entirely avoided during those exercises, which results in 4 predicted TTS takes of humpbacks from explosive detonations.

The modeling indicates that humpback whales will not be exposed to levels associated with any type of injury as a result of exposure to MFAS/HFAS. Further, NMFS believes that many marine mammals would avoid exposing themselves to the received levels necessary to induce injury (and avoid getting as close to the vessel as they would need to: within approximately 10 m (10.9 yd)) by moving away from or at least modifying their path to avoid a close approach. Also, NMFS believes that the mitigation measures would be effective at avoiding injurious exposures to animal that approached within the safety zone, especially in the case of these large animals.

The model predicts that 1 humpback would be injured by an explosive detonation. However, as stated previously, the relatively small area within which an animal would have to be present at a particular moment to be injured (12 to 1023 m (13 to 1119 yd)) and the visibility of these species, coupled with the 1862-m (2036-yd) exclusion zone (no explosives detonated if animals are in there), which is surveyed up to 2 hours in advance of the exercise by vessel-based observers, as well as aerial and passive acoustic means (when available), support the determination that no humpback whales will be injured by explosive detonations.

Last, as mentioned above, humpback whale numbers are reported to be increasing both in Hawaii and in Alaska, where the majority of the Hawaii humpback whales feed in the summer.

Subsistence Harvest of Marine Mammals

NMFS has preliminarily determined that the issuance of an LOA for Navy training exercises in the HRC would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use, since there are no such uses in the specified area.

ESA

There are seven marine mammal species and five sea turtle species that are listed as endangered under the ESA with confirmed or possible occurrence in the study area: humpback whale, North Pacific right whale, sei whale, fin whale, blue whale, sperm whale, and Hawaiian monk seal, loggerhead sea turtle, the green sea turtle, hawksbill sea turtle, leatherback sea turtle, and olive ridley sea turtle. The Navy has begun consultation with NMFS pursuant to section 7 of the ESA, and NMFS will also consult internally on the issuance of an LOA under section 101(a)(5)(A) of the MMPA for training exercises in the HRC. Consultation will be concluded prior to a determination on the issuance of the final rule and an LOA.

NEPA

NMFS has participated as a cooperating agency on the Navy's Final Environmental Impact Statement (FEIS) for the Hawaii Range Complex, which was published on May 9th, 2008. Additionally, NMFS is preparing a Draft Environmental Assessment (EA) tiered off the Navy's FEIS that analyzes the environmental effects of several different mitigation alternatives for the potential issuance of the HRC proposed rule and LOA. The Draft EA will be posted on NMFS' Web site as soon as it is complete: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. The Navy's FEIS is also posted on NMFS website.

NMFS intends to adopt the Navy's FEIS, if adequate and appropriate, and we believe that the Navy's FEIS and NMFS' final EA will allow NMFS to meet its responsibilities under NEPA for the issuance of an LOA for training activities in the HRC. If the Navy's FEIS were not adequate, NMFS would supplement the existing analysis and documents to ensure that we comply with NEPA prior to the issuance of the final rule or LOA.

Preliminary Determination

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation measures, NMFS preliminarily finds that the total taking from Navy training exercises utilizing MFAS/HFAS and underwater explosives in the HRC will have a negligible impact on the affected species or stocks. NMFS has proposed regulations for these exercises that prescribe the means of affecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Classification

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is significant.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. section 605 (b), that the action will not have a significant economic impact on a substantial number of small entities.

The Navy is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. Any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: June 13, 2008.

Samuel D. Rauch III

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

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart P is added to part 216 to read as follows:

Subpart P—Taking Marine Mammals Incidental to U.S. Navy Training in the Hawaii Range Complex (HRC)

Sec.

216.170 Specified activity and specified geographical region.
216.171 Effective dates and definitions.
216.172 Permissible methods of taking.
216.173 Prohibitions.
216.174 Mitigation.
216.175 Requirements for monitoring and reporting.
216.176 Applications for Letters of Authorization.
216.177 Letters of Authorization.
216.178 Renewal of Letters of Authorization.
216.179 Modifications to Letters of Authorization.
Table 1 to Part 216, Subpart P—Summary of Monitoring Effort Proposed in Monitoring Plan for Hawaii Range Complex

Subpart P—Taking Marine Mammals Incidental to U.S. Navy Training in the Hawaii Range Complex (HRC)

§ 216.170 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the Hawaii Operational Area, which extends from 16 to 43o N. lat. and from 150–179° degrees W. long.,

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources for U.S. Navy anti-submarine warfare (ASW) training in the amounts indicated below (± 10 percent):

(i) AN/SQS–53 (hull-mounted sonar)—up to 6420 hours over the course of 5 years (an average of 1284 hours per year)

(ii) AN/SQS–56 (hull-mounted sonar)—up to 1915 hours over the course of 5 years (an average of 383 hours per year)

(iii) AN/AQS–22 (helicopter dipping sonar)—up to 5050 dips over the course of 5 years (an average of 1010 dips per year)

(iv) SSQ–62 (sonobuoys)—up to 12115 sonobuoys over the course of 5 years (an average of 2423 sonobuoys per year)

(v) MK–48 (torpedoes)—up to 1565 topedoes over the course of 5 years (an average of 313 torpedoes per year)

(vi) AN/BQQ–10 (submarine mounted sonar)—up to 1,000 hours over the course of 5 years (an average of 200 per year)

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

(i) Underwater Explosives:

(A) 5'' Naval Gunfire (9.5 lbs)
(B) 76 mm rounds (1.6 lbs)
(C) Maverick (78.5 lbs)
(D) Harpoon (448 lbs)
(E) MK–82 (238 lbs)
(F) MK–83 (574 lbs)
(G) MK–84 (945 lbs)
(H) MK–48 (851 lbs)
(I) Demolition Charges (20 lbs)
(J) EER/IEER (5 lbs)

(ii) Training Events:

(A) Mine Neutralization—up to 310 exercises over the course of 5 years (an average of 62 per year).

(B) Air-to-Surface MISSILEX—up to 180 exercises over the course of 5 years (an average of 36 per year).

(C) Surface-to-Surface MISSILEX—up to 35 exercises over the course of 5 years (an average of 7 per year).

(D) BOMBEX—up to 180 exercises over the course of 5 years (an average of 35 per year).

(E) SINKEX—up to 30 exercises over the course of 5 years (an average of 6 per year).

(F) Surface-to-Surface GUNEX—up to 345 exercises over the course of 5 years (an average of 69 per year).

(G) Naval Surface Fire Support—up to 110 exercises over the course of 5 years (an average of 22 per year).

§ 216.171 Effective dates and definitions.

(a) Regulations in this subpart become effective upon issuance of the final rule.

(b) The following definitions are utilized in this subpart:

(1) Uncommon Stranding Event (USE)—A stranding event that takes place during a major training exercise and involves any one of the following:

(i) Two or more individuals of any cetacean species (not including mother/calf pairs, unless of species of concern listed in next bullet) found dead or live on shore within a two day period and occurring on same shore lines or facing shorelines of different islands.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: Beaked whale of any species, kogia sp., Risso's dolphin, melon-headed whale, pilot whales, humpback whales, sperm whales, blue whales, fin whales, sei whales, or monk seal.

(iii) A group of 2 or more cetaceans of any species exhibiting indicators of distress.

(2) Shutdown—The cessation of MFAS operation or detonation of explosives within 14 nm of any live, in the water animal involved in a USE.

§ 216.172 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.177, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 216.170(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.170(c) must be conducted in a manner that minimizes, to the greatest

extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 216.170 (c) is limited to the following species, by the indicated method of take the indicated number of times:

(1) Level B Harassment (+/−10 percent):

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—9893.

(B) Minke whale (*Balaenoptera acutorostrata*)—64.

(C) Sei whale (*Balaenoptera borealis*)—46.

(D) Fin whale (*Balaenoptera physalus*)—46.

(E) Bryde's whale (*Balaenoptera edeni*)—64.

(ii) Odontocetes:

(A) Sperm whales (*Physeter macrocephalus*)—781.

(B) Pygmy sperm whales (*Kogia breviceps*)—865.

(C) Dwarf sperm whale (*Kogia sima*)—2122.

(D) Cuvier's beaked whale (*Ziphius cavirostris*)—1149.

(E) Blainville's beaked whale (*Mesoplodon densirostris*)—357.

(F) Longman's beaked whale (*Indopacetus pacificus*)—105.

(G) Rough-toothed dolphin (*Steno bredanensis*)—1077.

(H) Bottlenose dolphin (*Tursiops truncatus*)—734.

(I) Pan-tropical dolphins (*Stenella attenuata*)—2199.

(J) Spinner dolphins (*Stenella longirostris*)—421.

(K) Striped dolphins (*Stenella coeruleoalba*).—3209.

(L) Risso's dolphin (*Grampus griseus*)—497.

(M) Melon-headed whale (*Peponocephala electra*)—597.

(N) Fraser's dolphin (*Lagenodelphis hosei*)—1247.

(O) Pygmy killer whale (*Feresa attenuata*)—196.

(P) False killer whale (*Pseudorca crassidens*)—46.

(Q) Killer whale (*Orcinus orca*)—46.

(R) Short-finned pilot whale (*Globicephala macrorynchus*)—1,798.

(iii) Pinnipeds: Hawaiian monk seal (*Monachus schauinslandi*)—110.

(2) Level A Harassment and/or mortality of no more than 10 individuals total of each of the species listed below over the course of the 5-year regulations: Bottlenose dolphin (*Tursiops truncatus*), Pygmy and Dwarf sperm whales (*Kogia breviceps* and *sima*), Melon-headed whale (*Peponocephala electra*), Pantropical spotted dolphin (*Stenella attenuata*), Pygmy killer whale (*Feresa attenuata*), Short-finned pilot whale (*Globicephala macrorynchus*), Striped dolphin (*Stenella coeruleoalba*), and Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale, (*Mesoplodon densirostris*), Longman's beaked whale (*Indopacetus pacificus*).

§ 216.173 Prohibitions.

Notwithstanding takings contemplated in § 216.172 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.177, no person in connection with the activities described in § 216.170 may:

(a) Take any marine mammal not specified in § 216.172(c);

(b) Take any marine mammal specified in § 216.172(c) other than by incidental take as specified in § 216.172(c)(1) and (2);

(c) Take a marine mammal specified in § 216.172(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 216.177.

§ 216.174 Mitigation.

(a) The activity identified in § 216.170(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting training activities identified in § 216.170(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.177 must be implemented. These mitigation measures include (but are not limited to):

(1) *Mitigation Measures for ASW training:* (i) All lookouts onboard platforms involved in ASW training events will review the NMFS-approved Marine Species Awareness Training (MSAT) material prior to use of mid-frequency active sonar.

(ii) All Commanding Officers, Executive Officers, and officers standing watch on the Bridge will have reviewed the MSAT material prior to a training event employing the use of mid-frequency active sonar.

(iii) Navy lookouts will undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968–B).

(iv) Lookout training will include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, Lookouts will complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(v) Lookouts will be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

(vi) On the bridge of surface ships, there will always be at least three people on watch whose duties include observing the water surface around the vessel.

(vii) All surface ships participating in ASW exercises will, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as lookouts.

(viii) Personnel on lookout and officers on watch on the bridge will have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(ix) On surface vessels equipped with mid-frequency active sonar, pedestal mounted ''Big Eye'' (20x110) binoculars will be present and in good working order.

(x) Personnel on lookout will employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–B).

(xi) After sunset and prior to sunrise, lookouts will employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(xii) Personnel on lookout will be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck.

(xiii) A Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order will be issued prior to each exercise to further disseminate the personnel training requirement and general marine mammal mitigation measures.

(xiv) Commanding Officers will make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(xv) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) will monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(xvi) During mid-frequency active sonar training activities, personnel will utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(xvii) Navy aircraft participating in exercises at sea will conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(xviii) Aircraft with deployed sonobuoys will use only the passive capability of sonobuoys when marine mammals are detected within 200 yards (182 m) of the sonobuoy.

(xix) Marine mammal detections will be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(xx) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy will ensure that MFA transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1,000, yards (914 m) of the sonar dome (the bow).

(A) Ships and submarines will continue to limit maximum MFAS transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(B) The Navy will ensure that MFAS transmissions will be limited to at least 10 dB below the equipment's normal operating level if any detected animals are within 500 yards (457 m) of the sonar dome. Ships and submarines will continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(C) The Navy will ensure that MFAS transmissions are ceased if any detected marine mammals are within 200 yards of the sonar dome. MFAS transmissions will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards beyond the location of the last detection.

(D) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the Officer of the Deck concludes that dolphins or porpoises are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(E) If the need for power-down should arise as detailed in ''Safety Zones'' above, Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 sonar was being operated).

(xxi) Prior to start up or restart of active sonar, operators will check that the Safety Zone radius around the sound source is clear of marine mammals.

(xxii) Sonar levels (generally)—Navy will operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xxiii) Helicopters shall observe/survey the vicinity of an ASW Operation for 10 minutes before the first deployment of active (dipping) sonar in the water.

(xxiv) Helicopters shall not dip their sonar within 200 yards (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yards (183 m) after pinging has begun.

(xxv) Submarine sonar operators will review detection indicators of close-aboard marine mammals prior to the commencement of ASW training activities involving active mid-frequency sonar.

(xxvi) Humpback Whale Cautionary Area: An area extending 5 km (2.7 nm) from a line drawn from Kaunakakai on the island of Molokai to Kaena Point on the Island of Lanai; and an area extending 5 km (2.7 nm) from a line drawn from Kaunolu on the Island of Lanai to the most Northeastern point on the Island of Kahoolawe; and within a line drawn from Kanapou Bay on the Island of Kahoolawe to Kanahena Point on the Island of Maui and a line drawn from Cape Halawa on the Island of Molokai to Lipo Point on the Island of Maui, excluding the existing submarine operating area.

(A) Should national security needs require MFA sonar training and testing in the cautionary area between 15 December and 15 April, it must be personally authorized by the Commander, U.S. Pacific Fleet based on his determination that training and testing in that specific area is required for national security purposes. This authorization shall be documented by the CPF in advance of transiting and training in the cautionary area, and the determination shall be based on the unique characteristics of the area from a military readiness perspective, taking into account the importance of the area for humpback whales and the need to minimize adverse impacts on humpback whales from MFA sonar whenever practicable. Further, Commander, U.S. Pacific Fleet will provide specific direction on required mitigation measures prior to operational units transiting to and training in the cautionary area.

(B) The Navy will provide advance notification to NMFS of any such activities (listed in paragraph (a)(1)(xxvi)(A) of this section).

(C) The Navy will include in its periodic reports for compliance with the MMPA whether or not activities occurred in the Humpback Cautionary Area above and any observed effects on humpback whales due to the conduct of these activities.

(xxvii) The Navy will abide by the letter of the ''Stranding Response Plan for Major Navy Training Exercises in the HRC'' (available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm),* to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in § 216.171) occurs during a Major Training Exercise (MTE, including RIMPAC, USWEX, or Multi-Strike Group Exercise) in the HRC, the Navy will implement the procedures described below.

(*1*) The Navy will implement a Shutdown (as defined in § 216.171) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the HRC Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy will maintain a dialogue, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(*2*) Any shutdown in a given area will remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(*3*) If the Navy finds an injured or dead animal floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational

security considerations allow. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) including carcass condition if the animal(s) is/are dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). Based on the information provided, NMFS will determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(*4*) In the event, following a USE, that: qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy will coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS training activities or explosive detonations, though farther than 14 nm from the distressed animal(s), is likely decreasing the likelihood that the animals return to the open water. If so, NMFS and the Navy will further coordinate to determine what measures are necessary to further minimize that likelihood and implement those measures as appropriate.

(B) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy will provide available information to NMFS (per the HRC Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using MFAS, and marine mammal sightings information associated with training activities occurring within 80 nm (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80 nm (148 km), 72 hours, period prior to the event will be provided as soon as it becomes available. The Navy will provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(C) Memorandum of Agreement (MOA)—The Navy and NMFS will develop an MOA, or other mechanism consistent with federal fiscal law requirements (and all other applicable laws), that allows the Navy to assist NMFS with the Phase 1 and 2 Investigations of USEs through the provision of in-kind services, such as (but not limited to) the use of plane/boat/truck for transport of stranding responders or animals, use of Navy property for necropsies or burial, or assistance with aerial surveys to discern the extent of a USE. The Navy may assist NMFS with the Investigations by providing one or more of the in-kind services outlined in the MOA, when available and logistically feasible and when the assistance does not negatively affect Fleet operational commitments.

(2) *Mitigation for IEER*—The following are protective measures for use with Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER) given an explosive source generates the acoustic wave used in this sonobuoy.

(i) Crews will conduct visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search should be conducted below 500 yards (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft training activities, crews are allowed to conduct coordinated area clearances.

(ii) Crews shall conduct a minimum of 30 minutes of visual and acoustic monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(iii) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 1,000 yards (914 m) of observed marine mammal activity, deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yards (914 m) of the intended post position, co-locate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.

(iv) When able, crews will conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of communication range of these sensors.

(v) Aural Detection: If the presence of marine mammals is detected aurally, then that should cue the aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

(vi) Visual Detection:

(A) If marine mammals are visually detected within 1,000 yards (914 m) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 1,000 yards (914 m) safety buffer.

(B) Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000 yards (914 m) safety buffer.

(vii) Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the ''Payload 1 Release'' command followed by the ''Payload 2 Release'' command. Aircrews shall refrain from using the ''Scuttle'' command when two payloads remain at a given post. Aircrews will ensure that a 1,000 yard (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(viii) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(ix) Ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(x) Mammal monitoring shall continue until out of own-aircraft sensor range.

(3) *Mitigation for Demolitions (DEMOs) and Mine Countermeasure (MCM) Training (Up to 20 lb).* (i) *Exclusion Zones*—Explosive charges will not be detonated if a marine mammal is detected within 700 yards (640 m) of the detonation site.

(ii) *Pre-Exercise Surveys*—For MCM training activities, the Navy will conduct a pre-exercise survey within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air. If a marine mammal is detected within the survey area, the exercise shall be suspended until the animal voluntarily leaves the area.

(iii) *Post-Exercise Surveys*—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

(iv) *Reporting*—Any evidence of a marine mammal that may have been injured or killed by the action shall be reported immediately to NMFS.

(v) *Mine Laying Training*—Though mine laying training operations involve aerial drops of inert training shapes on floating targets, measures 1, 2, and 3 for Demolitions and Mine countermeasures (above) will apply to mine laying training. To the maximum extent feasible, the Navy shall retrieve inert mine shapes dropped during Mine Laying Training.

(4) *Mitigation for SINKEX, GUNEX, MISSILEX, and BOMBEX.* (i) All weapons firing would be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(ii) Extensive range clearance operations would be conducted in the hours prior to commencement of the exercise, ensuring that no shipping is located within the hazard range of the longest-range weapon being fired for that event.

(iii) Prior to conducting the exercise, remotely sensed sea surface temperature maps would be reviewed. SINKEX and air to surface missile (ASM) Training activities would not be conducted within areas where strong temperature discontinuities are present, thereby indicating the existence of oceanographic fronts. These areas would be avoided because concentrations of some listed species, or their prey, are known to be associated with these oceanographic features.

(iv) An exclusion zone with a radius of 1.0 nm (1.85 km) would be established around each target. This exclusion zone is based on calculations using a 449 kg H6 NEW high explosive source detonated 5 feet below the surface of the water, which yields a distance of 0.85 nm (1.57 km) (cold season) and 0.89 nm (1.64 km) (warm season) beyond which the received level is below the 182 dB re: 1 Pa sec2 threshold established for the WINSTON S. CHURCHILL (DDG 81) shock trials. An additional buffer of 0.5 nm (0.93 km) would be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which extends from the exclusion zone at 1.0 nm (1.85 km) out an additional 0.5 nm (0.93 km), would be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

(v) A series of surveillance over-flights would be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol would be as follows:

(A) Overflights within the exclusion zone would be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy's Search and Rescue (SAR) Tactical Aid (TACAID). The SAR TACAID provides the best search altitude, ground speed, and track spacing for the discovery of small, possibly dark objects in the water based on the environmental conditions of the day. These environmental conditions include the angle of sun inclination, amount of daylight, cloud cover, visibility, and sea state.

(B) All visual surveillance activities would be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team would have completed the Navy's marine mammal training program for lookouts.

(C) In addition to the overflights, the exclusion zone would be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring would be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals in the vicinity of the exercise. The sonobuoys would be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The OCE would be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

(D) On each day of the exercise, aerial surveillance of the exclusion and safety zones would commence two hours prior to the first firing.

(E) The results of all visual, aerial, and acoustic searches would be reported immediately to the OCE (Officer Conducting the Exercise). No weapons launches or firing would commence until the OCE declares the safety and exclusion zones free of marine mammals.

(F) If a marine mammal observed within the exclusion zone is diving, firing would be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes has elapsed. After 30 minutes, if the animal has not been re-sighted it would be assumed to have left the exclusion zone and firing would commence.

(G) During breaks in the exercise of 30 minutes or more, the exclusion zone would again be surveyed for any marine mammals. If marine mammals are sighted within the exclusion zone, the OCE would be notified, and the procedure described above would be followed.

(H) Upon sinking of the vessel, a final surveillance of the exclusion zone would be monitored for two hours, or until sunset, to verify that no marine mammals were harmed.

(vi) Aerial surveillance would be conducted using helicopters or other aircraft based on necessity and availability. The Navy has several types of aircraft capable of performing this task; however, not all types are available for every exercise. For each exercise, the available asset best suited for identifying objects on and near the surface of the ocean would be used. These aircraft would be capable of flying at the slow safe speeds necessary to enable viewing of marine mammals with unobstructed, or minimally obstructed, downward and outward visibility. The exclusion and safety zone surveys may be cancelled in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

(vii) Every attempt would be made to conduct the exercise in sea states that are ideal for marine mammal sighting, Beaufort Sea State 3 or less. In the event of a 4 or above, survey efforts would be increased within the zones. This would be accomplished through the use of an additional aircraft, if available, and conducting tight search patterns.

(viii) The exercise would not be conducted unless the exclusion zone could be adequately monitored visually.

(ix) In the unlikely event that any marine mammals are observed to be harmed in the area, a detailed description of the animal would be documented, the location noted, and if possible, photos taken. This information would be provided to NMFS.

(b) [Reserved]

§ 216.175 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§ 216.106 and 216.177 for activities described in § 216.170(b) is required to cooperate with the NMFS, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) As outlined in the HRC Stranding Communication Plan, the Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 216.170(b) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 216.170(c).

(c) The Holder of the Letter of Authorization must conduct all monitoring and/or research required under the Letter of Authorization including abiding by the letter of the HRC Monitoring Plan, which requires the Navy implement, at a minimum, the monitoring activities summarized in Table 1 to this subpart (and described in more detail in the HRC Monitoring Plan, which may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm).*

(d) Report from Monitoring required in paragraph (c) of this section—The

Navy will submit a report annually on September 1 describing the implementation and results (through June 1 of the same year) of the monitoring required in paragraph (c) of this section. Standard marine species sighting forms will be use to standardize data collection and data collection methods will be standardized across ranges to allow for comparison in different geographic locations.

(e) SINKEX, GUNEX, MISSILEX, BOMBEX, and IEER exercises—A report detailing the timelines of the exercises conducted, the time the surveys commenced and terminated, amount and types of all ordnance expended, and the results of survey efforts for each event will be submitted to NMFS yearly.

(f) MFAS/HFAS exercises—The Navy will submit an After Action Report to the Office of Protected Resources, NMFS, within 120 days of the completion of any Major Training Exercise (RIMPAC, USWEX, and Multi Strike Group). For other ASW exercises (TRACKEX and TORPEX), the Navy will submit a yearly summary report. These reports will, at a minimum, include the following information:

(1) The estimated number of hours of sonar operation, broken down by source type

(2) If possible, the total number of hours of observation effort (including observation time when sonar was not operating)

(3) A report of all marine mammal sightings (at any distance—not just within a particular distance) to include, when possible, and if not classified:

(i) Species.

(ii) Number of animals sighted.

(iii) Geographic location of marine mammal sighting.

(iv) Distance of animal from any ship with observers.

(v) Whether animal is fore, aft, port, or starboard.

(vi) Direction of animal movement in relation to boat (towards, away, parallel).

(vii) Any observed behaviors of marine mammals.

(4) The status of any sonar sources (what sources were in use) and whether or not they were powered down or shut down as a result of the marine mammal observation.

(5) The platform that the marine mammals were sighted from.

(g) HRC Comprehensive Report—The Navy will submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which individual reports are required in § 216.175 (d) through (f) of this section. This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012.

(h) The Navy will respond to NMFS comments on the draft comprehensive report if submitted within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or three months after the submittal of the draft if NMFS does not comment by then.

(i) Comprehensive National ASW Report—The Navy will submit a draft National Report that analyzes, compares, and summarizes the data gathered from the watchstanders and pursuant to the implementation of the Monitoring Plans for the HRC, the Atlantic Fleet active Sonar Training (AFAST), and the Southern California (SOCAL) Range Complex.

(j) The Navy will respond to NMFS comments on the draft comprehensive report if submitted within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or three months after the submittal of the draft if NMFS does not comment by then.

§ 216.176 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 216.170(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §§ 216.177 or a renewal under § 216.178.

§ 216.177 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.178.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 216.178 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.177 for the activity identified in § 216.170(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.176 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 216.175(b); and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 216.174 and the Letter of Authorization issued under §§ 216.106 and 216.177, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.178 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in this subpart or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

§ 216.179 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.177 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.178, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists

that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.170(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.177 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

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Table 1 to Part 216 Subpart P. Summary of monitoring effort proposed in Monitoring Plan for the Hawaii Range Complex

STUDY 1,3, 4 (exposures and behavioral responses)	FY08	FY09	FY10	FY11	FY12	FY13
Aerial surveys	Award monitoring contract, develop SOP, obtain permits	SCC OPS, or TRE or Unit Level - 60 hours of active sonar	SCC OPS or TRE or Unit Level - 60 hours of active sonar	SCC OPS or TRE or Unit Level - 60 hours of active sonar	(Only if not enough data to complete study)	(Only if not enough data to complete study)
		Three nearshore underwater detonation events	Three nearshore underwater detonation events	Three nearshore underwater detonation events	SCC OPS or TRE or Unit Level - 60 hours of active sonar	
			1-2 SINKEX events		Three nearshore underwater detonation events	SCC OPS or TRE or Unit Level - 60 hours of active sonar
					1-2 SINKEX events	
Marine Mammal Observers	Opportunistic as staff and SOP developed	SCC OPS or TRE or Unit Level - 60 hours	SCC OPS or TRE or Unit Level - 60 hours	SCC OPS or TRE or Unit Level - 60 hours	(Only if not enough data to complete study)	(Only if not enough data to complete study)
					SCC OPS or TRE or Unit Level - 60 hours	SCC OPS or TRE or Unit Level - 60 hours if study not completed
Tagging before during and after training events	NOAA project in conjunction with RIMPAC 08 (partial Navy funding)	Order tags and secure tagging permit	SCC OPS August and February – 5 animals	SCC OPS August and February – 5 animals	SCC OPS August and February – 5 animals	(Only if not enough data to complete study)
	Award monitoring contract		Unit level - 5 animals	Unit level – 5 animals	Unit level – 5 animals	SCC OPS August and February – 5 animals
						Unit level – 5 animals
Vessel surveys (study 3 and 4 only)	NOAA project in conjunction with RIMPAC 08 (partial Navy funding)	USWEX – 40 hours	USWEX – 40 hours	USWEX – 40 hours	(Only if not enough data to complete study)	(Only if not enough data to complete study)
	Award monitoring contract, develop SOP	Unit level – 100 hours	Unit level – 100 hours	Unit level – 100 hours	USWEX – 40 hours	USWEX – 40 hours
		Three nearshore underwater detonation events	Three nearshore underwater detonation events	Three nearshore underwater detonation events	Unit level – 100 hours	Unit level – 100 hours
					Three nearshore underwater detonation	Three nearshore underwater detonation
Shore based surveys (study 4 only)		Nearshore underwater detonation events near appropriate coastal topography	Nearshore underwater detonation events near appropriate coastal topography	Nearshore underwater detonation events near appropriate coastal topography	(Only if not enough data to complete study)	(Only if not enough data to complete study)
					Nearshore underwater detonation events near appropriate coastal topography	Nearshore underwater detonation events near appropriate coastal topography
STUDY 2 (geographic redistribution)	**FY08**	**FY09**	**FY10**	**FY11**	**FY12**	**FY13**
Aerial surveys before and after training events	USWEX – 60 hours	Unit level – 40 hours	Unit level – 40 hours	Unit level – 40 hours	(Only if not enough data to complete study)	(Only if not enough data to complete study)
	RIMPAC – 40 hours				Unit Level - 40 hours	Unit Level - 40 hours
Passive Acoustics	Award monitoring contract	Order devices and determine best location	Installation of 10 autonomous devices in the HRC	Continue recording from 10 devices	Continue recording from 10 devices and data analysis	Data Analysis and continue recording from 10 devices only if not enough data to complete study
			Begin recording	Begin data analysis		
Study 5 (mitigation effectiveness)	**FY08**	**FY09**	**FY10**	**FY11**	**FY12**	**FY13**
Marine mammal observers/lookout comparison	Training Events – 40 hours	Unit level – 100 hours	Unit level – 100 hours	Unit level – 100 hours	(Only if not enough data to complete study)	(Only if not enough data to complete study)
		Training events – 40 hours	Training Events– 40 hours	Training Events – 40 hours	Unit level – 100 hours	Unit level – 100 hours
					Training Events – 40 hours	Training Events – 40 hours
Aerial surveys before and after training events, exercise area and coastlines	USWEX – 60 hours	Unit level – 40 hours	Unit level – 40 hours	Unit level – 40 hours	(Only if not enough data to complete study)	(Only if not enough data to complete study)
	RIMPAC – 40 hours				Unit level – 40 hours	Unit level – 40 hours

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Remining Incentives; comments due by 6-30-08; published 5-1-08 [FR E8-09564]

NATIONAL CREDIT UNION ADMINISTRATION

Credit Union Service Organizations; comments due by 6-30-08; published 5-1-08 [FR E8-09457]

NATIONAL TRANSPORTATION SAFETY BOARD

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records; comments due by 6-30-08; published 3-31-08 [FR E8-06393]

POSTAL REGULATORY COMMISSION

Universal Service Obligation; comments due by 6-30-08; published 4-30-08 [FR E8-09464]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

Cessna Aircraft Company 172, 175, 180, 182, 185, 206, 207, 208, 210, and 303 Series Airplanes; comments due by 7-1-08; published 5-2-08 [FR E8-09719]

Hawker Beechcraft Corporation Model 390 Airplanes; comments due by 6-30-08; published 5-1-08 [FR E8-09566]

Rolls-Royce plc (RR) Models Trent 768-60, 772-60, 772B 60, and 772C-60 Turbofan Engines; comments due by 6-30-08; published 5-30-08 [FR E8-12061]

Stemme GmbH & Co. KG Model S10-VT Powered Sailplanes; comments due by 7-2-08; published 6-2-08 [FR E8-12115]

Various Aircraft Equipped With Honeywell Primus II RNZ 850 etc., Integrated Navigation Units; comments due by 7-3-08; published 5-19-08 [FR E8-11104]

Proposed Establishment of Class D Airspace:

Victoria, TX; comments due by 7-3-08; published 5-19-08 [FR E8-10953]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Average Fuel Economy Standards:

Passenger Cars and Light Trucks, Model Years 2011-2015; comments due by 7-1-08; published 5-2-08 [FR 08-01186]

Passenger Car Average Fuel Economy Standards:

Model Years 2008-2020 and Light Truck Average Fuel Economy Standards — Model Years 2008-2020; Request for Product Plan Information; comments due by 7-1-08; published 5-2-08 [FR 08-01185]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 2420/P.L. 110–247

Federal Food Donation Act of 2008 (June 20, 2008; 122 Stat. 2314)

Last List June 20, 2008

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1	(869–064–00001–7)	5.00	[4] Jan. 1, 2008
2	(869–064–00002–5)	8.00	Jan. 1, 2008
3 (2006 Compilation and Parts 100 and 102)	(869–064–00003–3)	35.00	[1] Jan. 1, 2008
4	(869–064–00004–1)	13.00	Jan. 1, 2008
5 Parts:			
1–699	(869–064–00005–0)	63.00	Jan. 1, 2008
700–1199	(869–064–00006–8)	53.00	Jan. 1, 2008
1200–End	(869–064–00007–6)	64.00	Jan. 1, 2008
6	(869–064–00008–4)	13.50	Jan. 1, 2008
7 Parts:			
1–26	(869–064–00009–2)	47.00	Jan. 1, 2008
27–52	(869–064–00010–6)	52.00	Jan. 1, 2008
53–209	(869–064–00011–4)	40.00	Jan. 1, 2008
210–299	(869–064–00012–2)	65.00	Jan. 1, 2008
300–399	(869–064–00013–1)	49.00	Jan. 1, 2008
400–699	(869–064–00014–9)	45.00	Jan. 1, 2008
700–899	(869–064–00015–7)	46.00	Jan. 1, 2008
900–999	(869–064–00016–5)	63.00	Jan. 1, 2008
1000–1199	(869–064–00017–3)	22.00	Jan. 1, 2008
1200–1599	(869–064–00018–1)	64.00	Jan. 1, 2008
1600–1899	(869–064–00019–0)	67.00	Jan. 1, 2008
1900–1939	(869–064–00020–3)	31.00	Jan. 1, 2008
1940–1949	(869–064–00021–1)	50.00	Jan. 1, 2008
1950–1999	(869–064–00022–0)	49.00	Jan. 1, 2008
2000–End	(869–064–00023–8)	53.00	Jan. 1, 2008
8	(869–064–00024–6)	66.00	Jan. 1, 2008
9 Parts:			
1–199	(869–064–00025–4)	64.00	Jan. 1, 2008
200–End	(869–064–00026–2)	61.00	Jan. 1, 2008
10 Parts:			
1–50	(869–064–00027–1)	64.00	Jan. 1, 2008
51–199	(869–064–00028–9)	61.00	Jan. 1, 2008
200–499	(869–064–00029–7)	46.00	Jan. 1, 2008
500–End	(869–064–00030–1)	65.00	Jan. 1, 2008
11	(869–064–00031–9)	44.00	Jan. 1, 2008
12 Parts:			
1–199	(869–064–00032–7)	37.00	Jan. 1, 2008
200–219	(869–064–00033–5)	40.00	Jan. 1, 2008
220–299	(869–064–00034–3)	64.00	Jan. 1, 2008
300–499	(869–064–00035–1)	47.00	Jan. 1, 2008
500–599	(869–064–00036–0)	42.00	Jan. 1, 2008
600–899	(869–064–00037–8)	59.00	Jan. 1, 2008
900–End	(869–064–00038–6)	53.00	Jan. 1, 2008
13	(869–064–00039–4)	58.00	Jan. 1, 2008
14 Parts:			
1–59	(869–064–00040–8)	66.00	Jan. 1, 2008
60–139	(869–064–00041–6)	61.00	Jan. 1, 2008
140–199	(869–064–00042–4)	33.00	Jan. 1, 2008
200–1199	(869–064–00043–2)	53.00	Jan. 1, 2008
1200–End	(869–064–00044–1)	48.00	Jan. 1, 2008
15 Parts:			
0–299	(869–064–00045–9)	43.00	Jan. 1, 2008
300–799	(869–064–00046–7)	63.00	Jan. 1, 2008
800–End	(869–064–00047–5)	45.00	Jan. 1, 2008
16 Parts:			
0–999	(869–064–00048–3)	53.00	Jan. 1, 2008
1000–End	(869–064–00049–1)	63.00	Jan. 1, 2008
17 Parts:			
*1–199	(869–064–00051–3)	53.00	Apr. 1, 2008
200–239	(869–062–00052–9)	60.00	Apr. 1, 2007
240–End	(869–062–00053–7)	62.00	Apr. 1, 2007
18 Parts:			
*1–399	(869–064–00054–8)	65.00	Apr. 1, 2008
400–End	(869–064–00055–6)	29.00	Apr. 1, 2008
19 Parts:			
1–140	(869–064–00056–4)	64.00	Apr. 1, 2008
*141–199	(869–064–00057–2)	61.00	Apr. 1, 2008
200–End	(869–064–00058–1)	34.00	Apr. 1, 2008
20 Parts:			
1–399	(869–062–00059–6)	50.00	Apr. 1, 2007
400–499	(869–062–00060–0)	64.00	Apr. 1, 2007
*500–End	(869–064–00061–1)	66.00	Apr. 1, 2008
21 Parts:			
1–99	(869–064–00062–9)	43.00	Apr. 1, 2008
100–169	(869–062–00063–4)	49.00	Apr. 1, 2007
170–199	(869–064–00064–5)	53.00	Apr. 1, 2008
200–299	(869–064–00065–3)	20.00	Apr. 1, 2008
*300–499	(869–064–00066–1)	33.00	Apr. 1, 2008
500–599	(869–064–00067–0)	50.00	Apr. 1, 2008
600–799	(869–064–00068–8)	20.00	Apr. 1, 2008
*800–1299	(869–064–00069–6)	63.00	Apr. 1, 2008
1300–End	(869–064–00070–0)	28.00	Apr. 1, 2008
22 Parts:			
1–299	(869–062–00071–5)	63.00	Apr. 1, 2007
300–End	(869–064–00072–6)	48.00	Apr. 1, 2008
***23**	(869–064–00073–4)	48.00	Apr. 1, 2008
24 Parts:			
0–199	(869–064–00074–2)	63.00	Apr. 1, 2008
*200–499	(869–064–00075–1)	53.00	Apr. 1, 2008
*500–699	(869–064–00076–9)	33.00	Apr. 1, 2008
*700–1699	(869–064–00077–7)	64.00	Apr. 1, 2008
1700–End	(869–064–00078–5)	33.00	Apr. 1, 2008
25	(869–062–00079–1)	64.00	Apr. 1, 2007
26 Parts:			
§§ 1.0–1–1.60	(869–064–00080–7)	52.00	Apr. 1, 2008
§§ 1.61–1.169	(869–062–00081–2)	63.00	Apr. 1, 2007
§§ 1.170–1.300	(869–062–00082–1)	60.00	Apr. 1, 2007
*§§ 1.301–1.400	(869–064–00083–1)	50.00	Apr. 1, 2008
*§§ 1.401–1.440	(869–064–00084–0)	59.00	Apr. 1, 2008
§§ 1.441–1.500	(869–064–00085–8)	61.00	Apr. 1, 2008
§§ 1.501–1.640	(869–064–00086–6)	52.00	Apr. 1, 2008
§§ 1.641–1.850	(869–064–00087–4)	64.00	Apr. 1, 2008
§§ 1.851–1.907	(869–064–00088–2)	64.00	Apr. 1, 2008
*§§ 1.908–1.1000	(869–064–00089–1)	63.00	Apr. 1, 2008
§§ 1.1001–1.1400	(869–062–00090–1)	61.00	Apr. 1, 2007
§§ 1.1401–1.1550	(869–064–00091–2)	61.00	Apr. 1, 2008
§§ 1.1551–End	(869–064–00092–1)	53.00	Apr. 1, 2008
*2–29	(869–064–00093–9)	63.00	Apr. 1, 2008
30–39	(869–062–00094–4)	41.00	Apr. 1, 2007
40–49	(869–062–00095–2)	28.00	[6] Apr. 1, 2007
*50–299	(869–064–00096–3)	45.00	Apr. 1, 2008

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300–499	(869–062–00097–9)	61.00	Apr. 1, 2007
500–599	(869–062–00098–7)	12.00	[5] Apr. 1, 2007
600–End	(869–064–00099–8)	20.00	Apr. 1, 2008
27 Parts:			
*1–39	(869–064–00100–5)	35.00	Apr. 1, 2008
40–399	(869–064–00101–3)	67.00	Apr. 1, 2008
400–End	(869–064–00102–1)	21.00	Apr. 1, 2008
28 Parts:			
0–42	(869–062–00103–7)	61.00	July 1, 2007
43–End	(869–062–00104–5)	60.00	July 1, 2007
29 Parts:			
0–99	(869–062–00105–3)	50.00	[7] July 1, 2007
100–499	(869–062–00106–1)	23.00	July 1, 2007
500–899	(869–062–00107–0)	61.00	[7] July 1, 2007
900–1899	(869–062–00108–8)	36.00	July 1, 2007
1900–1910 (§§ 1900 to 1910.999)	(869–062–00109–6)	61.00	July 1, 2007
1910 (§§ 1910.1000 to end)	(869–062–00110–0)	46.00	July 1, 2007
1911–1925	(869–062–00111–8)	30.00	July 1, 2007
1926	(869–062–00112–6)	50.00	July 1, 2007
1927–End	(869–062–00113–4)	62.00	July 1, 2007
30 Parts:			
1–199	(869–062–00114–2)	57.00	July 1, 2007
200–699	(869–062–00115–1)	50.00	July 1, 2007
700–End	(869–062–00116–9)	58.00	July 1, 2007
31 Parts:			
0–199	(869–062–00117–7)	41.00	July 1, 2007
200–499	(869–062–00118–5)	46.00	July 1, 2007
500–End	(869–062–00119–3)	62.00	July 1, 2007
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
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1–190	(869–062–00120–7)	61.00	July 1, 2007
191–399	(869–062–00121–5)	63.00	July 1, 2007
400–629	(869–062–00122–3)	61.00	July 1, 2007
630–699	(869–062–00123–1)	37.00	July 1, 2007
700–799	(869–062–00124–0)	46.00	July 1, 2007
800–End	(869–062–00125–8)	47.00	July 1, 2007
33 Parts:			
1–124	(869–062–00126–6)	57.00	July 1, 2007
125–199	(869–062–00127–4)	61.00	July 1, 2007
200–End	(869–062–00128–2)	57.00	July 1, 2007
34 Parts:			
1–299	(869–062–00129–1)	50.00	July 1, 2007
300–399	(869–062–00130–4)	40.00	July 1, 2007
400–End & 35	(869–062–00131–2)	61.00	July 1, 2007
36 Parts:			
1–199	(869–062–00132–1)	37.00	July 1, 2007
200–299	(869–062–00133–9)	37.00	July 1, 2007
300–End	(869–062–00134–7)	61.00	July 1, 2007
37	(869–062–00135–5)	58.00	July 1, 2007
38 Parts:			
0–17	(869–062–00136–3)	60.00	July 1, 2007
18–End	(869–062–00137–1)	62.00	July 1, 2007
39	(869–062–00138–0)	42.00	July 1, 2007
40 Parts:			
1–49	(869–062–00139–8)	60.00	July 1, 2007
50–51	(869–062–00140–1)	45.00	July 1, 2007
52 (52.01–52.1018)	(869–062–00141–0)	60.00	July 1, 2007
52 (52.1019–End)	(869–062–00142–8)	64.00	July 1, 2007
53–59	(869–062–00143–6)	31.00	July 1, 2007
60 (60.1–End)	(869–062–00144–4)	58.00	July 1, 2007
60 (Apps)	(869–062–00145–2)	57.00	July 1, 2007
61–62	(869–062–00146–1)	45.00	July 1, 2007
63 (63.1–63.599)	(869–062–00147–9)	58.00	July 1, 2007
63 (63.600–63.1199)	(869–062–00148–7)	50.00	July 1, 2007
63 (63.1200–63.1439)	(869–062–00149–5)	50.00	July 1, 2007
63 (63.1440–63.6175)	(869–062–00150–9)	32.00	July 1, 2007
63 (63.6580–63.8830)	(869–062–00151–7)	32.00	July 1, 2007
63 (63.8980–End)	(869–062–00152–5)	35.00	July 1, 2007
64–71	(869–062–00153–3)	29.00	July 1, 2007
72–80	(869–062–00154–1)	62.00	July 1, 2007
81–84	(869–062–00155–0)	50.00	July 1, 2007
85–86 (85–86.599–99)	(869–062–00156–8)	61.00	July 1, 2007
86 (86.600–1–End)	(869–062–00157–6)	61.00	July 1, 2007
87–99	(869–062–00158–4)	60.00	July 1, 2007
100–135	(869–062–00159–2)	45.00	July 1, 2007
136–149	(869–062–00160–6)	61.00	July 1, 2007
150–189	(869–062–00161–4)	50.00	July 1, 2007
190–259	(869–062–00162–2)	39.00	[7] July 1, 2007
260–265	(869–062–00163–1)	50.00	July 1, 2007
266–299	(869–062–00164–9)	50.00	July 1, 2007
300–399	(869–062–00165–7)	42.00	July 1, 2007
400–424	(869–062–00166–5)	56.00	[7] July 1, 2007
425–699	(869–062–00167–3)	61.00	July 1, 2007
700–789	(869–062–00168–1)	61.00	July 1, 2007
790–End	(869–062–00169–0)	61.00	July 1, 2007
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
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10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–062–00170–3)	24.00	July 1, 2007
101	(869–062–00171–1)	21.00	July 1, 2007
102–200	(869–062–00172–0)	56.00	July 1, 2007
201–End	(869–062–00173–8)	24.00	July 1, 2007
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[9] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–062–00208–1)	32.00	Oct. 1, 2007
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[8] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
200–599	(869–062–00221–1)	45.00	Oct. 1, 2007
600–659	(869–062–00222–0)	31.00	Oct. 1, 2007
660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,499.00	2008
Microfiche CFR Edition:			
Subscription (mailed as issued)		406.00	2008
Individual copies		4.00	2008
Complete set (one-time mailing)		332.00	2007
Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.