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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0131]

Emerald Ash Borer; Quarantined Areas; Michigan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the emerald ash borer regulations by adding areas in Michigan to the list of areas quarantined because of emerald ash borer. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the emerald ash borer from infested areas in the State of Michigan into noninfested areas of the United States.

DATES: This interim rule became effective September 25, 2006. We will consider all comments that we receive on or before December 1, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0131 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to APHIS–2006–0131, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to APHIS–2006–0131.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Deborah McPartlan, Operations Officer, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The emerald ash borer (EAB) (*Agrilus planipennis*) is a destructive wood-boring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, Taiwan, and Canada, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues.

Quarantined Areas

The EAB regulations in 7 CFR 301.53–1 through 301.53–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of EAB to noninfested areas of the United States. Portions of the States of Indiana, Michigan, and Ohio are already designated as quarantined areas.

Recent surveys conducted by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that spot infestations of EAB have occurred outside the quarantined areas in Michigan. Specifically, spot infestations of EAB have been found to be prevalent throughout the Lower Peninsula of Michigan. Officials of the U.S. Department of Agriculture (USDA) and officials of State, county, and city agencies in Michigan are conducting intensive survey and eradication programs in the infested areas. Michigan has quarantined the infested areas and has restricted the intrastate movement of regulated articles from the quarantined areas to prevent the spread of EAB to noninfested areas in the Upper Peninsula of Michigan. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined areas to prevent the spread of EAB to other States.

The regulations in § 301.53–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where EAB has been found by an inspector, where the Administrator has reason to believe that EAB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where EAB has been found.

Less than an entire State will be designated as a quarantined area only under certain conditions. Such a designation may be made if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles; and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of the EAB.

In accordance with these criteria and the recent EAB findings described above, we are amending § 301.53–3(c) to add the areas in the Lower Peninsula of Michigan that had not previously been quarantined to the list of quarantined areas. A list of the counties in Michigan that have been designated as quarantined areas can be found in the regulatory text at the end of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to help prevent the spread of EAB to noninfested areas of

the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the EAB regulations by adding areas in Michigan to the list of quarantined areas. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of this plant pest into noninfested areas of the United States.

Ash trees are valuable to the commercial timber industry and are commonly planted in urban areas. According to the Forest Inventory and Analysis data collected by the USDA's Forest Service, there are approximately 850 million ash trees in Michigan forests that are at risk. These quantities do not include the millions of ash trees extensively planted in communities, in yards, and along public rights-of-way. [1]

If EAB were to spread from infested areas to the surrounding forests of the northeastern United States, where nursery, landscaping, and timber industries and forest-based recreation and tourism industries play a vital economic role, the economic impact would be severe. In addition, the cost to Federal and State agencies for EAB eradication programs would increase significantly.

This interim rule will affect business entities located within the newly quarantined areas of Michigan.

Although more than 7,000 nursery operations are located within the quarantined areas of Michigan, the rule only affects the movement of nursery stock composed of deciduous shade trees of an ash species. It is also estimated that approximately 5,000 to 6,000 sawmills and firewood dealers are located within or near quarantined areas of the State. The Michigan EAB survey program is currently a statewide effort. Estimates indicate that as many as 15,000 firms and businesses located in quarantined areas may be affected. We do not have information on the exact number of operations that will be regulated in the areas in Michigan that will be newly quarantined for EAB, although we can estimate that there were around 481 nurseries in those areas in 2002.

The Small Business Administration (SBA) has established size criteria based on the North American Industry Classification System (NAICS) for determining which economic entities meet the definition of a small firm. The SBA classifies nursery and tree production businesses (NAICS category 111421) as small entities if their annual sales receipts are $750,000 or less. The SBA classifies forest nursery and gathering of forest products businesses (NAICS category 113210) as small entities if their annual sales receipts are $6.5 million or less. The SBA classifies logging operations (NAICS category 113310) and sawmills (NAICS category 321113) as small entities if they employ 500 or fewer persons.

The exact number and size of newly affected entities is unknown. The Michigan Department of Agriculture estimates that more than 90 percent of nursery operations located in Michigan's Lower Peninsula counties are small operations with annual receipts of less than $750,000 (including nursery operations that sell deciduous shade trees).[2] It is reasonable to assume that nearly all sawmills and logging operations have 500 or fewer employees, since more than 80 percent of the sawmills located in Michigan have fewer than 20 employees, with an average of 14–15 employees per operation.[3]

The percentage of annual revenue attributable to ash species alone for affected entities is unknown. However, by way of comparison, we estimate that only about 10 to 20 of the nurseries in the original quarantined area in Michigan (6 counties), or 0.2 to 0.5 percent of all nurseries in those counties, were expected to be affected by the rule that quarantined that area. It is possible that a similarly small percentage of nurseries will be affected in the areas quarantined under this rule.

Under the regulations, regulated articles may be moved interstate from a quarantined area into or through an area that is not quarantined only if they are accompanied by a certificate or limited permit. An inspector or a person operating under a compliance agreement will issue a certificate for interstate movement of a regulated article if certain conditions are met, including that the regulated article is determined to be apparently free of EAB.

Businesses could be affected by the regulations in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification of regulated articles to be moved interstate from the quarantined area; or (2) present its regulated articles for inspection by an inspector and obtain a certificate or a limited permit, issued by the inspector, for the interstate movement of regulated articles. The inspections may be inconvenient, but they should not be costly in most cases, even for businesses operating under a compliance agreement who would perform the inspections themselves. For those businesses that elect not to enter into a compliance agreement, APHIS would provide the services of the inspector without cost. There is also no cost for the compliance agreement, certificate, or limited permit for the interstate movement of regulated articles.

Second, there is a possibility that, upon inspection, a regulated article could be determined by the inspector to be potentially infested with EAB, and, as a result, the article would be ineligible for interstate movement under a certificate. In such a case, the entity's ability to move regulated articles interstate would be restricted. However, the affected entity could conceivably obtain a limited permit under the conditions of § 301.53–5(b).

Our experience with administering the EAB regulations and the regulations for other pests, such as the Asian longhorned beetle, that impose essentially the same conditions on the interstate movement of regulated articles lead us to believe that any economic effects on affected small entities will be small and are outweighed by the benefits associated with preventing the spread of EAB into noninfested areas of the United States.

Under these circumstances, the Administrator of the Animal and Plant

[1] McPartlan, Deborah, USDA, APHIS, PPQ, ''Eradication of emerald ash borer in Michigan, Ohio, and Indiana: Implementation of the Strategic Plan.'' April 2003.

[2] Personal communication, Tom Rose, Plant and Pest Management, Michigan Department of Agriculture.

[3] ''2002 Economic Census: Manufacturing'' U.S. Census Bureau, July 2005 (Michigan Geographical report).

Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.53–3, paragraph (c), the entry for Michigan is revised to read as follows:

§ 301.53–3 Quarantined areas.

* * * * *

(c) * * *

Michigan

Upper Peninsula: *Chippewa County.* Brimley area. That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Michigan Route 28 and Crawford Street; then north on Crawford Street to Irish Line Road; then north on Irish Line Road to its end and continuing north along an imaginary line to the Bay Mills/Superior Township line; then north and east along the Bay Mills/Superior Township line to the Lake Superior shoreline; then east along the Lake Superior shoreline to the Bay Mills/Soo Township line; then south on the Bay Mills/Soo Township line to the intersection of the Dafter and Superior Township lines at 6 Mile Road; then south along the Dafter/Superior Township line to Forrest Road; then south on Forrest Road to Michigan Route 28; then west on Michigan Route 28 to the point of beginning. [Note: This quarantined area includes tribal land of the Bay Mills Indian Community. Movement of regulated articles on those lands is subject to tribal jurisdiction.]

Lower Peninsula: All counties, in their entirety (i.e., Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Macomb, Manistee, Mason, Mecosta, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw Sanilac, St. Clair, St. Joseph, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford Counties).

* * * * *

Done in Washington, DC, this 25th day of September 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–8424 Filed 9–29–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

8 CFR Part 1003

[EOIR Docket No. 143F; AG Order No. 2838–2006]

RIN 1125–AA47

Review of Custody Determinations

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts, with changes, an interim rule published in the **Federal Register** on October 31, 2001, by the Department of Justice, pertaining to the review of custody decisions by the Executive Office for Immigration Review (EOIR) with respect to aliens being detained by the Immigration and Naturalization Service (INS), now the Department of Homeland Security (DHS). This rule retains the existing regulatory provision for DHS to invoke a temporary automatic stay of an immigration judge's decision ordering an alien's release in any case in which a DHS official has ordered that the alien be held without bond or has set a bond of $10,000 or more, in order to maintain the status quo while DHS seeks expedited review of the custody order by the Board of Immigration Appeals (Board) or the Attorney General. However, this rule clarifies the basis on which DHS may invoke the automatic stay provision, and limits the duration of the automatic stay.

DATES: This final rule is effective November 1, 2006.

FOR FURTHER INFORMATION CONTACT: MaryBeth Keller, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Introduction

On October 31, 2001, the Attorney General published an interim rule to amend the regulations relating to review of custody determinations by immigration judges. The interim rule expanded a preexisting provision first adopted in 1998 for a temporary automatic stay of an immigration judge's decision ordering the release of an alien in certain cases where the INS had determined that no conditions of release were appropriate for an alien or had set an initial bond of $10,000 or more. 66 FR 54909 (Oct. 31, 2001). The purpose of the 2001 interim rule was to provide a means for the INS to maintain the status quo in those cases where it chose to invoke the automatic stay while it was seeking an expedited review of the custody order by the Board. The 2001 interim rule also provided for a temporary automatic stay in those cases where the Commissioner of INS, within five days of the Board's decision, refers a custody decision by the Board to the Attorney General for review.

The Department explained when the interim rule was published that ''This stay is a limited measure and is limited in time—it only applies where the Service determines that it is necessary to invoke the special stay procedure pending appeal, and the stay only remains in place until the Board has had the opportunity to consider the matter.'' 66 FR at 54910. The Department at that time also explained that it was merely

building on the approach of the preexisting automatic stay rule, citing the Board's decision in *Matter of Joseph,* 22 I&N Dec. 660 (BIA 1999). In *Matter of Joseph,* which addressed the 1998 version of the automatic stay rule, the Board observed that:

> The automatic stay provision is intended as a safeguard for the public, as well as a measure to enhance agencies' ability to effect removal should that be the ultimate final order in a given case. It ''preserv[es] the status quo briefly while the Service seeks expedited appellate review of the immigration judge's custody decision. The Board of Immigration Appeals retains full authority to accept or reject the Service's contentions on appeal.''

Id. at 670.

In connection with the provision for a temporary stay of a decision referred to the Attorney General by the Commissioner, the Department explained in 2001 (66 FR at 54910):

> This change in § 3.19 makes explicit, in the context of bond appeals, the general principle that a ''decision of the Board is not final while pending review before the Attorney General on certification.'' *Matter of Farias,* 21 I&N Dec. 269, 282 (BIA 1996; A.G. 1997). This provision for an automatic stay will avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues.

After the adoption of the interim rule, Congress enacted the Homeland Security Act (HSA), which abolished the INS and transferred its functions to DHS. Pub. L. 107–296, tit. IV, subtits. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended (codified primarily at 6 U.S.C. 101 *et seq.*). The HSA, however, retained the functions of EOIR (including the immigration judges and the Board) within the Department of Justice, under the direction of the Attorney General. HSA, tit. XI, 116 Stat. at 2273. The transfer of the former INS functions to DHS took effect on March 1, 2003.

In order to reflect the division of authority under the HSA, it was necessary for the Attorney General to promulgate regulations pertaining to EOIR separate from the regulations of the former INS that are codified in 8 CFR chapter I. Accordingly, on February 28, 2003, the Attorney General transferred or duplicated the regulations related to EOIR and certain other functions that the Attorney General retained under the HSA from 8 CFR Chapter I into a new 8 CFR Chapter V and into 28 CFR. 68 FR 9824 (Feb. 28, 2003); 68 FR 10349 (March 5, 2003).

As a result of these changes, the automatic stay rule, previously codified at 8 CFR 3.19(i)(2), is now found at 8 CFR 1003.19(i)(2). The authority to invoke the automatic stay of a decision of an immigration judge pending an expedited appeal to the Board is now vested in DHS. Moreover, the authority to certify a Board decision to the Attorney General for review is now vested in the Secretary of Homeland Security, or in senior DHS officials designated by the Secretary with the concurrence of the Attorney General. *See* 8 CFR 1003.1(h)(1)(iii); *Matter of D-J-,* 23 I&N Dec. 572, 573 & n.1 (A.G. 2003).

More recently, Congress enacted the REAL ID Act of 2005, Pub. L. No. 109–13, Div. B, 119 Stat. 231 (May 11, 2005). Among other things, this law eliminated the jurisdiction of the Federal district courts to review challenges to removal orders through habeas corpus proceedings, and transferred such habeas petitions then pending in district courts to the courts of appeals, to be treated as petitions for review of the removal order. The REAL ID Act, however, does not preclude habeas corpus review of challenges to detention that are independent of challenges to removal orders. *See id.; see also, e.g., Hernandez* v. *Gonzales,* 424 F.3d 42, 42 (1st Cir. 2005) (mem. & order).

Changes Made by This Final Rule

This final rule adopts the interim rule in final form with several changes, in light of the public comments and the Department's experience in adjudicating cases that are subject to the automatic stay rule. These changes are explained here and are further discussed below in the responses to the public comments.

First, in order to allay possible concerns that in some case the automatic stay might be invoked by low-level employees of DHS without supervisory review, or might be invoked without an adequate factual or legal basis, this rule makes two changes in the process for invoking the automatic stay. The final rule provides that the decision to file the Form EOIR–43 (which must be done within one business day of the immigration judge's custody decision) will be subject to the discretion of the Secretary. Under the provisions of the automatic stay rule which are not changed by this final rule, the automatic stay will lapse 10 business days after the issuance of the immigration judge's decision unless DHS files within that time a notice of appeal with the Board presenting DHS's arguments for reversal or modification of the immigration judge's custody decision. This rule adds a new requirement that, in order to preserve the automatic stay, a senior legal official of DHS must certify that the official has approved the filing of the notice of appeal to the Board and that there is factual and legal support justifying the continued detention of the alien.

Second, the final rule provides that the automatic stay will lapse 90 days after the filing of the notice of appeal. DHS, however, may seek a discretionary stay under the existing provisions of 8 CFR 1003.19(i)(1) if the Board has not decided the appeal by the time the automatic stay is expiring. The rule makes clear that DHS may submit a motion for discretionary stay at any time after the filing of its notice of appeal of the custody decision, even well in advance of the 90-day deadline, and can incorporate by reference the arguments in its custody brief in favor of continued detention of the alien, as provided in section 236 of the INA (8 U.S.C. 1226), during the pendency of the removal proceedings against the alien.[1]

The 90-day duration for the automatic stay in bond cases should not be confused with the specific deadlines in the existing rules governing the timeliness of the Board's decisions. Under 8 CFR 1003.1(e)(8), the time for the Board's disposition of appeals is measured from the time the case is ready for adjudication on appeal—that is, the 90-day period for adjudication of single Board member cases begins only after the preparation of the record (including transcripts) and the completion of briefing by the parties. Section 1003.1(e)(8) directs the Board to issue decisions as soon as practicable, with a priority for cases or custody appeals involving detained aliens, but does not set a specific shorter period of time for such priority cases.

In contrast to § 1003.1(e)(8), this final rule measures the 90-day duration of the automatic stay from the date that the notice of appeal is filed. That is a short time frame for action by the Board since it does not include an additional allowance of time for preparation of the record of proceedings and the 21-day period for the filing of simultaneous briefs in appeals involving detained aliens. *See* 8 CFR 1003.5(a), 1003.3(c)(1). In the past, the Board has been able to issue a decision within a 90-day time frame in most automatic stay cases, and the Department expects that the Board will continue to be able to do so in the future.

The Department recognizes, however, that case processing delays may occur that affect preparation of the record and ultimately the timeliness of the Board's

[1] According to EOIR statistics, the immigration judges conducted over 86,000 removal proceedings during Fiscal Year 2004 involving aliens who were detained during the pendency of the removal proceedings.

decision. Such delays can be both internal to the process of preparing a case for adjudication or caused externally by the parties. The Department is adding to the rule several new provisions that should assist in addressing procedural delays that may adversely affect the Board's ability to resolve these custody appeals during the pendency of the automatic stay period. These requirements should improve the Board's priority handling of bond appeals in automatic stay cases.

The final rule directs immigration judges to issue written custody decisions in automatic stay cases within 5 business days after the immigration judge is advised that DHS has filed a notice of appeal, a rule similar to current operating policy and procedure. (In exigent circumstances, the Board may agree to an extension of not more than 5 additional business days.) With rare exceptions, the custody hearings conducted by immigration judges are not recorded or transcribed at the present time, so when a custody decision is appealed it is necessary for the immigration judge to issue a written decision describing the evidence and explaining the result. The regulation already requires that DHS must file the Form EOIR–43 (invoking the automatic stay) within one business day of the immigration judge's decision, but DHS's notice of appeal (after review of the case by a senior legal official) is not due until 10 business days after the immigration judge's decision. The rule also directs the immigration court to prepare and submit the record of proceedings on the custody decision without delay. The Department 's intent is to avoid unnecessary delays before the record of proceedings is submitted to the Board.

In addition, the Department is inserting a provision into the rule directing the Board to track the progress of each custody appeal which is subject to an automatic stay in order to avoid unnecessary delays in completing the record for decision. The Board will notify the parties of the date the automatic stay will expire.

Also, the rule provides that, if the Board grants an alien's request for additional briefing time, then the Board's order will also toll the 90-day period for the same number of days. Such requests for extensions are rare, but they do occur. The premise of this provision is to provide flexibility if the Board grants additional time for the filing of the alien's brief, to ensure that such delays do not impact the ability of the Board to resolve the custody appeal during the period of the automatic stay. This provision does not cover requests by DHS for additional briefing time, as DHS is free to seek a discretionary stay if necessary.

For those appeals where, for whatever reason, the process of preparing the record of proceedings, briefing by the parties, and consideration and decision by the Board is not accomplished within the 90-day duration of the automatic stay, the final rule provides that the automatic stay will lapse at the end of the 90-day period even though the Board has not completed action on the custody appeal. Although the Board gives priority to custody appeals involving detained aliens, pursuant to § 1003.1(e)(8), the Department recognizes that it may not always be possible for the Board to resolve a custody appeal within 90 days after the filing of a notice of appeal because of the complexity of the issues or some unusual delay in the process. In that instance, DHS will be required to seek a discretionary stay under 8 CFR 1003.19(i)(1) pending final action by the Board. DHS should file its motion for discretionary stay a reasonable time before the expiration of the 90-day period in order to avoid the disruptions resulting from last-minute stay motions.

Because the Board generally will already have the record of proceedings and the parties' briefs before it at that point, the Board should be able to determine very promptly whether to grant a discretionary stay in connection with its disposition of the merits of the custody appeal. To ensure that there is no inadvertent gap in the process, the rule provides that, if the Board fails to adjudicate a previously-filed stay motion by the end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes for the Board to decide whether or not to grant a discretionary stay.

Then, if the Board denies a discretionary stay or issues a decision upholding the immigration judge's custody decision, then the Secretary or designated DHS official will have 5 business days to consider whether to refer the decision for the Attorney General's personal review, as discussed below. This time frame is consistent with the current regulation at § 1003.19(i)(2).

Third, the final rule provides a new limitation on the duration of the automatic stay in the context of the Attorney General's personal review of a custody decision. Under the final rule, if the Secretary or designated DHS official refers a custody decision to the Attorney General within 5 business days after the Board's decision, the automatic stay will continue for 15 business days after the case is referred to the Attorney General. The Attorney General may, of course, grant a further stay in the exercise of his discretion, and the rule provides that DHS's referral of a case to the Attorney General may include a motion and proposed order in support of a discretionary stay. This rule, as revised, will allow a brief period of time for the Attorney General to consider the merits of the referred decision and the arguments presented, and either to act on the referred decision, to decline to intervene, or to order a discretionary stay pending the Attorney General's final decision of the case on the merits. The final rule provides that DHS may include in connection with the referral a motion requesting a discretionary stay if DHS believes that the case requires such a stay, but DHS may also suggest that the legal questions in the case referred to the Attorney General be preserved for decision even if the stay is allowed to terminate. This revised approach is eminently reasonable in connection with the rare and significant cases where the Secretary or designated DHS official refers a custody decision from the Board for the Attorney General's consideration and decision.[2]

The interim rule already provides an automatic stay for 5 business days of a decision by the Board authorizing the release of an alien, in order to allow a brief period of time for the Secretary or a senior DHS official to consider the case personally and decide whether to refer the decision to the Attorney General for his personal review. The final rule preserves the existing provision, but makes a necessary conforming change in light of the new provision setting a fixed date for the expiration of the automatic stay of the immigration judge's decision. This rule provides that the automatic stay will continue for 5 business days not only if the Board issues a decision authorizing the alien's release, but also if the Board denies a discretionary stay or if the Board fails to act prior to the expiration of the automatic stay on a DHS motion for discretionary stay, since the result in those cases would also be the release of the alien from custody. In either case, the premise of this rule is to allow the Secretary or designated DHS official the

[2] Former Attorney General Janet Reno had previously elaborated on issues relating to staying a decision by the Board pending review of the merits by the Attorney General in *Matter of A-H-*, A.G. Order 2380–2001 (A.G. Jan. 19, 2001). *See In re E-L-H-*, 23 I&N Dec. 700 (A.G. 2004) (attachment). This rule sets a specific time limit with respect to custody appeals referred to the Attorney General, providing that the stay will extend only 15 business days after the Board's decision is certified to the Attorney General, unless the Attorney General grants a discretionary stay pending his further review.

opportunity within a brief 5-day period to consider whether to refer the case to the Attorney General, before DHS is obligated to release the alien. This result is similar to the mandate rules in effect in many courts, which provide that decisions of the court do not take effect until the issuance of the mandate a fixed number of days after the court's decision. Under the existing provisions of the rule, the automatic stay will lapse if DHS does not refer the case to the Attorney General within 5 business days.

Fourth, although the change was not included in the interim rule, the final rule clarifies the language of the existing stay provision in 8 CFR 1003.19(i)(1) to refer to the authority of DHS to seek ''a discretionary stay (whether or not on an emergency basis)'' at any time. This is not a substantive change in the applicability of this provision, but is a more accurate description of the Board's existing stay authority under this provision rather than the current shorthand term ''an emergency stay.'' The Board itself already refers to a stay under § 1003.19(i)(1) as a ''discretionary stay'' and considers whether to grant a stay as such. *See, e.g., Matter of Joseph,* 22 I&N Dec. at 662 (''the Board granted the Service a temporary discretionary stay of the Immigration Judge's release order pursuant to our authority under 8 CFR 3.19(i)(1)''). The rule properly allows DHS to seek a stay under § 1003.19(i)(1) (whether or not on an emergency basis) at any time. However, the actual decision granting a stay of an immigration judge's custody decision under § 1003.19(i)(1) has never been limited to ''emergency'' situations on the merits of the custody appeal, but a stay may be granted in the exercise of discretion by the Board.

Finally, the final rule makes stylistic changes to § 1003.19(i) reflecting the transfer of authority from the former INS to DHS and the redesignation of § 3.19(i) as § 1003.19(i). The rule also makes a technical change to the organization of the automatic stay provisions by removing provisions relating to the Board's procedures from § 1003.19, which relates to the immigration judge proceedings, and transferring them to a more appropriate location in the Board's regulations at § 1003.6(c) and (d) (covering the Board's review of an immigration judge's decision, and Attorney General review, respectively). Paragraph (d) codifies the Attorney General's existing authority to grant a case-by-case discretionary stay in any case certified to the Attorney General for review.

Public Comments

The interim rule provided for a 60-day comment period which ended on December 31, 2001. The Department received six comments from various organizations and will respond to them by subject matter. Five commenters were opposed to the interim rule in general, raising issues regarding its constitutionality, the breadth of its provisions, and the present meaningfulness of custody review, and challenging the need to change the preexisting stay provisions. Several of those commenters also offered alternative suggestions to achieve the stated goal of the rule. One commenter supported the interim rule in general but urged that the automatic stay provisions be applied selectively.

After careful review and consideration of the comments, the Department has chosen not to adopt the comments and suggestions precisely as stated. However, the Department has decided to make several changes to the interim rule, in response to the public comments and the Department's experience in adjudicating cases subject to the automatic stay, to limit the duration of the automatic stay and clarify the circumstances in which it is invoked. These changes, taken together, substantially respond to the merits of the comments and establish an unquestionably firm legal basis for the implementation of the final rule in the future.

Due Process—Freedom From Restraint

Five commenters stated that the interim regulation is unconstitutional because it violates the Due Process Clause of the Fifth Amendment. Specifically, the commenters assert that the interim regulation violates the substantive due process right to be free from restraint because it is too broad and not narrowly tailored.

The commenters cited several Supreme Court cases for the proposition that aliens are to be afforded due process upon entry into the United States. The most recent Supreme Court decision cited in the comments, *Zadvydas* v. *Davis,* 533 U.S. 678 (2001), states that due process guarantees apply to '' 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.'' *Id.* at 693. Commenters contended that the Department could point to no authority holding that the fundamental right to be free from bodily restraint is reserved only to citizens. Several commenters criticized the regulation based on their view that aliens in removal proceedings should be entitled to a right to be free from restraint that is analogous to the right that applies to the pre-trial detention of criminal defendants.

Moreover, commenters stated that the supplementary language in the interim rule skirted or misstated important Federal court cases. For example, the Department cited *Wong Wing* v. *United States,* 163 U.S. 228, 235 (1896), and *Doherty* v. *Thornburgh,* 943 F.2d 204 (2d Cir. 1991), in support of the interim rule. The commenters, however, asserted that the Department ignored the finding in those cases that all aliens present in the United States have full due process rights.

Conversely, the commenter in support of the interim rule stated this constitutionally protected liberty interest is weak in the case of illegal aliens who have no well-founded expectations of being permitted to remain in the United States. According to the commenter, their detention can be avoided if they are willing to depart the United States voluntarily. This commenter noted that the custody review process provides for administrative appeals of detention decisions even though there is no constitutional requirement to do so, that individuals detained pursuant to the automatic stay provisions can challenge their detention by seeking a writ of habeas corpus from a Federal district court, and that, therefore, aliens are provided with ''all the 'process' they are due under the Fifth Amendment's due process clause.''

In response, the Department notes that the due process arguments of the commenters opposed to the interim rule are not well founded and fundamentally misstate the relevant jurisprudence. The Department extensively considered the constitutional issues relating to the detention of aliens in general and the automatic stay rule in particular when the Attorney General first adopted the automatic stay provision in 1998. *See* 63 FR 27441, 27448–49 (1998). The following discussion reviews the jurisprudence as it relates to the detention of aliens during removal proceedings, and explains how this rule functions within the statutory framework. When properly considered, there is no question that the authority for this rule is well grounded in law.

Aliens have no right to bond during removal proceedings. The Supreme Court has repeatedly ''recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process,'' *Demore* v. *Kim,* 538 U.S. 510, 523 (2003), and has recognized that ''Congress eliminated any presumption

of release pending deportation, committing that determination to the discretion of the Attorney General,'' *Reno* v. *Flores,* 507 U.S. 292, 306 (1993); *see also Carlson* v. *Landon,* 342 U.S. 524, 534 (1952). Under longstanding provisions of the Immigration and Nationality Act, the Attorney General has had broad detention authority. *Flores,* 507 U.S. at 294 (''Congress has given the Attorney General broad discretion to determine whether, and on what terms, an alien arrested on suspicion of being deportable should be released pending the deportation hearing''). Now, after enactment of the HSA, the Secretary of Homeland Security exercises that discretion in carrying out the detention and enforcement authority formerly administered by the INS, and the Attorney General and his delegates (the Board and the immigration judges) exercise that discretion in the review of the custody decisions initially made by DHS. *See Matter of* D-J-, 23 I&N Dec. at 573–76.

Neither the regulations nor administrative decisions place any official limit on the discretion that the Attorney General or his delegates exercise with respect to the granting of bond or parole during removal proceedings. *See id.* at 575–76 (''As recognized by the Supreme Court, section 236(a) does not give detained aliens any *right* to release on bond. *See Carlson* v. *Landon,* 342 U.S. 524, 534 (1952). Rather, the statute merely gives the Attorney General the authority to grant bond if he concludes, in the exercise of broad discretion, that the alien's release on bond is warranted * * *. Further, the INA does not limit the discretionary factors that may be considered by the Attorney General in determining whether to detain an alien pending a decision on asylum or removal.''). Release on bond is, in fact, ''a form of discretionary relief.'' *Barbour* v. *INS,* 491 F.2d 573, 578 (5th Cir.), *cert. denied,* 419 U.S. 873 (1974). Given that many aliens in removal proceedings are clearly engaged in a continuing violation of United States law by their mere presence in the United States, release on bond is an extraordinary act of sovereign generosity. *See Reno* v. *American-Arab Anti-Discrimination Comm.,* 525 U.S. 471, 491 (1999) (''in all cases, deportation is necessary in order to bring to an end *an ongoing violation* of United States law''); *INS* v. *Lopez-Mendoza,* 468 U.S. 1032, 1039 (1984) (''The purpose of deportation is not to punish past transgressions but rather to put an end to a continuing violation of the immigration laws''); *Gomez-Chavez* v. *Perryman,* 308 F.3d 796, 800–01 (7th Cir. 2002) (an alien ''can have no liberty interest in remaining in violation of applicable United States law'').

Moreover, removal proceedings are civil proceedings, and aliens have no substantive due process right to be at large during the pendency of removal proceedings against them because they have no fundamental right to be in the United States at all. *See Carlson* v. *Landon,* 342 U.S. 524, 534 (1952) (''So long, however, as aliens fail to obtain and maintain citizenship by naturalization, they remain subject to the plenary power of Congress to expel them under the sovereign right to determine what noncitizens shall be permitted to remain within our borders''); *DeMartinez* v. *Ashcroft,* 363 F.3d 1022, 1028 (9th Cir. 2004) (''Aliens have no fundamental right to be in the United States and Congress has exceedingly broad power over the admission and expulsion of aliens.'') (internal quotations omitted); *Munoz* v. *Ashcroft,* 339 F.3d 950, 954 (9th Cir. 2003) (rejecting alien's substantive due process argument, because control over immigration is a ''fundamental sovereign attribute exercised by the Government's political departments''). In addition, another primary distinction between a criminal defendant and an alien detained pending his removal proceedings is that the alien may secure his release at any time by agreeing to leave the country. *See Richardson* v. *Reno,* 180 F.3d 1311, 1317 n.7 (11th Cir. 1999) (unlike criminal cases, immigration detention ''is not entirely beyond [the alien's] control; he is detained only because of the removal proceedings, and he may obtain his release any time he chooses by withdrawing his application for admission and leaving the United States''); *Parra* v. *Perryman,* 172 F.3d 954, 958 (7th Cir. 1999) (detained alien ''has the keys in his pocket''); *Doherty* v. *Thornburgh,* 943 F.2d 204, 212 (2d Cir. 1991) (detained alien ''possessed, in effect, the key that unlocks his prison cell''). Aliens who are clearly deportable (often admittedly so) and seek only discretionary relief have even less at stake, because they have no liberty interest in discretionary relief applications. *See Tovar-Landin* v. *Ashcroft,* 361 F.3d 1164, 1167 (9th Cir. 2004); *United States* v. *Aguirre-Tello,* 353 F.3d 1199, 1205 (10th Cir. 2004) (en banc); *Mireles-Valdez* v. *Ashcroft,* 349 F.3d 213, 219 (5th Cir. 2003); *Nativi-Gomez* v. *Ashcroft,* 344 F.3d 805, 808 (8th Cir. 2003); *Smith* v. *Ashcroft,* 295 F.3d 425, 429 (4th Cir. 2002); *Huicochea Gomez* v. *INS,* 237 F.3d 696, 699–700 (6th Cir. 2001); *Tefel* v. *Reno*, 180 F.3d 1286, 1300 (11th Cir. 1999); *Ahmetovic* v. *INS,* 62 F.3d 48, 53 (2d Cir. 1995); *Adras* v. *Nelson,* 917 F.2d 1552, 1558 (11th Cir. 1990); *Achacoso-Sanchez* v. *INS,* 779 F.2d 1260, 1264 (7th Cir. 1985).[3] Finally, as observed, unlike most criminal defendants, immigration law violators are engaged in an ongoing violation of law. *Lopez-Mendoza,* 468 U.S. at 1046 (applying the exclusionary rule in a deportation proceeding that sought to prevent ongoing illegal activity as opposed to punishing the alien for past transgressions would allow courts ''to close their eyes to ongoing violations of the law''). Thus, to the extent an illegal alien in immigration proceedings has any constitutional right to remain at large, it is a weak one.

Congress clearly provided for the Attorney General and the Secretary to have broad discretionary authority with respect to the detention of aliens pending removal. The INA places no substantive limits on their discretion to detain or grant bonds or parole to aliens during removal proceedings. INA section 236(a), 8 U.S.C. 1226(a), grants unfettered discretion to grant or deny bonds, and section 236(b) gives discretion to revoke bonds. The HSA transferred the former INS's detention, removal, enforcement, and investigative functions to DHS. *See also* INA § 103(a)(3), 8 U.S.C. 1103(a)(3) (2000) (granting broad authority to the Secretary to issue regulations with respect to the administration of the immigration laws); INA § 236(e), 8 U.S.C. 1226(e) (providing that discretionary bond and parole decisions

[3] Although the initial custody decision by an immigration judge often may take place at an early stage of the removal proceedings, there are also instances where the immigration judge or the Board are making custody decisions after an alien has conceded removability at a master calendar hearing but is seeking discretionary relief from removal, or even after an immigration judge has ordered the alien removed during the time that the merits issues are still pending on appeal before Board. For example, in *Matter of D-J-*, the Board made its decision on the alien's custody appeal more than one month after the alien had already been denied asylum and ordered removed by the immigration judge, but before the alien's merits appeal had been addressed by the Board. 23 I&N Dec. at 582 (''The IJ's denial of the respondent's application for asylum increases the risk that the respondent will flee if released from detention'').

Moreover, for those cases that are the subject of petitions for review in the circuit courts, it is very often the case that the alien has either conceded removability before an immigration judge or been found removable, or at least does not contest that anything other than discretionary relief from removal is at issue. In such cases, where there is no claim for mandatory relief, the alien can secure his freedom by agreeing to leave the country, and the only cost is merely the abandonment of a discretionary relief application in which he or she has no liberty interest anyway.

are not within any court's jurisdiction to set aside or review).

The important immigration-related purpose of detaining aliens in appropriate cases during the pendency of removal proceedings is plainly evident from the Department of Justice Inspector General's report in February 2003, which updated and largely mirrored the results of the Inspector General's 1996 report. In the 2003 report, the Inspector General found that the former INS had successfully carried out removal orders and warrants with respect to almost 94% of aliens who had been detained during the pendency of their removal proceedings. However, in stark contrast, only 13% of final removal orders and warrants were carried out against non-detained aliens (a group that includes aliens ordered released by DHS, immigration judges, or the Board). The Inspector General specifically noted the former INS was successful in removing only 6% of non-detained aliens from countries that the United States Department of State identified as sponsors of terrorism; only 35% of non-detained aliens with criminal records; and only 3% of non-detained aliens denied asylum. Office of the Inspector General, U.S. Department of Justice, *The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders,* Report Number I–2003–004 (Feb. 2003).

Statistics prepared by the Executive Office for Immigration Review also substantiate that large numbers of respondents who are released on bond or on their own recognizance fail to appear for their removal hearings before an immigration judge. For the last 4 fiscal years, 37% (FY 2004), 41% (FY 2003), 49% (FY 2002), and 52% (FY 2001) of such respondents have failed to appear for their scheduled hearings, and the immigration judges have either issued in absentia removal orders or administratively closed those removal proceedings. EOIR, FY 2004 Statistical Year Book at H3 (March 2005).[4] These numbers—*totaling over* 52,000 ''*no-show*'' *aliens in just the last four years after being released from custody*—reflect only those respondents released from custody who fail to appear for their removal hearings before the immigration judges. (They do not include the substantial additional number of non-detained aliens who *do* appear for their immigration judge hearing, but then fail to surrender after their removal order becomes final and join the growing ranks of hundreds of thousands of absconders currently at large.) Given that over 52,000 aliens who had been released from custody—45% of the total number of respondents who were released on bond or on their own recognizance—failed to show up for their scheduled removal hearings in just the past 4 years, the Attorney General has very good reason to provide a special process for prompt review by the Board of initial decisions by the immigration judges in certain cases. DHS can then invoke that process, on a discretionary basis, but only in those cases where DHS had detained an alien without bond or had set a bond of $10,000 or more, prior to being required to release the alien.

Past experience shows that DHS has invoked the automatic stay in only a select number of custody cases. For example, the EOIR statistics indicate that, in FY 2004, the immigration judges conducted some 33,000 custody hearings and the Board adjudicated 1,373 custody appeals. Yet, DHS sought an automatic stay only with respect to 273 aliens in FY 2004—and only 43 aliens in FY 2005.

Due Process—Indefinite Detention

Several commenters also suggested that the interim rule provides for indefinite detention of aliens and is therefore contrary to the Supreme Court's decision in *Zadvydas* v. *Davis,* 533 U.S. 678 (2001).

In response, the Department notes that these arguments misstate the procedural posture of these cases. *Zadvydas* was a case where removal proceedings were completed but the government was unable to remove the alien from the United States, and the alien contended that continued detention under section 241(a) of the INA served no immigration-related purpose as an aid to deportation in light of the difficulties in repatriating the alien.

By contrast, the detention cases covered by the automatic stay in this final rule only concern the detention of aliens under section 236 of the INA during the pendency of removal proceedings against them. The duration of such detention is necessarily limited by the ultimate completion of those removal proceedings, and the immigration-related purpose of such detention during the pendency of removal proceedings as an aid to removal of aliens who ultimately receive final orders of removal cannot be doubted, for the reasons summarized herein and discussed at greater length in the relevant judicial decisions relating to section 236 of the INA and the supplementary information accompanying the 1998 and 2001 automatic stay rules. The Supreme Court in *Kim* contrasted that case with *Zadvydas,* and found that because ''the statutory provision at issue governs detention of deportable criminal aliens *pending their removal proceedings* * * *[,] the detention necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings.'' *Kim,* 538 U.S. at 527–28. The Court also found that the detention during the pendency of removal proceedings was not ''indefinite'' or ''potentially permanent,'' because the detention has ''a definite termination point,'' that being the completion of proceedings. *Id.* at 528–29.

As the Supreme Court noted in *Kim,* an alien's detention during the pendency of removal proceedings is necessarily bounded by the period of time necessary to bring the underlying removal proceedings themselves to a conclusion. *Id.* Once the alien becomes the subject of a final order of removal, the alien is no longer detained under the authority of section 236 of the INA, and any issues relating to the automatic stay would become moot. At that point, detention of aliens subject to final orders of removal is governed instead by section 241(a) of the INA, 8 U.S.C. 1231(a), which generally requires detention of such aliens until they can be removed from the United States.

In fact, in most cases the alien will be detained pursuant to the automatic stay rule for a period of time substantially shorter than the length of the removal proceedings. The stay remains in effect only until the Board has ruled on the custody appeal, and the automatic stay is extinguished by the Board's order on the custody appeal, even if the Board has not yet considered the alien's removal proceedings on the merits. *See Matter of Joseph,* 22 I&N Dec. 799 (BIA 1999) (*Joseph II*). The existing regulations, 8 CFR 1003.1(e)(8), already require the Board to give ''a priority for cases or custody appeals involving detained aliens'' and also provide direction with respect to how long appeals should take: in general, *all appeals* assigned to a single Board member will be disposed of within 90 days after completion of the record on

[4] These EOIR statistics for ''released'' aliens who are released on bond or on their own recognizance cover only those aliens who were released from custody after the initiation of removal proceedings against them.

EOIR also tracks a separate category of ''non-detained'' aliens—including those aliens who were never taken in custody by DHS at all (such as many asylum applicants) as well as those aliens who had been apprehended but were released by DHS prior to or at the time of the initiation of removal proceedings against them. Of those ''non-detained'' aliens, 38% failed to appear for their removal hearings during the last 4 fiscal years—a total of almost 130,000 ''no-show'' aliens in just the last 4 years. FY 2004 Statistical Year Book at H2.

appeal, and all appeals assigned to a three-member panel of the Board will be disposed of within 180 days. Id. Thus, the automatic stay ''is a limited measure and is limited in time—it only applies where the [DHS] determines that it is necessary * * * and the stay only remains in place until the Board has had the opportunity to consider the matter.'' 66 FR at 54910. Under this final rule, the automatic stay of the decision of the immigration judge is further limited to 90 days after the filing of the notice of appeal, even if the Board has not yet completed action on DHS's custody appeal or an appeal on the merits of the removal proceedings.

We note the Ninth Circuit's recent decision concluding that DHS is not authorized to continue an alien in detention for an indefinite period more than six months where there is no significant likelihood of the alien's removal in the reasonably foreseeable future. *See Nadarajah* v. *Gonzales,* 443 F.3d 1069 (9th Cir. 2006). Nadarajah was an arriving alien and was therefore detained under section 235(b) of the INA. As a result, he was not eligible for an IJ custody hearing pursuant to 8 CFR 1003.19(h)(2)(i)(B), and the case therefore has no direct bearing on the rules for stays in custody hearings. That said, however, the *Nadarajah* court read *Demore* v. *Kim* more narrowly than suggested above. Nothing in *Nadarajah,* however, suggests any infirmity in this final rule. This rule imposes a flat 90-day limitation on the duration of the automatic stay in any case in which DHS pursues an appeal of an IJ custody order; includes several provisions to expedite the timing of the Board's adjudication of such appeals; and also imposes a brief fixed period for an automatic stay in those rare custody cases certified for review by the Attorney General. Thus, there is no issue of indefinite detention in connection with review of custody issues under this rule. Moreover, although IJ custody proceedings are distinct from removal proceedings, 8 CFR 1003.19(d), the likelihood that the alien will or will not be able to obtain relief from removal on the merits is an important factor the IJ and the Board consider in evaluating whether an alien who is seeking to be released may pose a risk of flight. *See Matter of* X-K-, 23 I&N Dec. 731, 736 (BIA 2005) (''Some aliens may demonstrate to the Immigration Judge a strong likelihood that they will be granted relief from removal and thus have great incentive to appear for further hearings.''); *Matter* of D-J-, 23 I&N Dec. 572, 582 (A.G. 2003) (''The IJ's denial of the respondent's application for asylum increases the risk that the respondent will flee if released from detention.''); *Matter of Adeniji,* 22 I&N Dec. 1102,____(BIA 1999) (''In view of [the alien's] criminal record and history of other questionable or deceitful behavior, we do consider him to present a risk of flight should he lose his case on the merits.'').

It is also important to note that the automatic stay rule in no way creates a new class of mandatory detention. As explained, aliens who are subject to mandatory detention under section 236(c) of the INA—the process that was explicitly upheld by the Supreme Court's decision in *Kim*—are detained without any individualized risk assessment, and *DHS has no choice whether or not to detain the alien.* By contrast, aliens subject to the automatic stay are being detained under the authority of section 236(a) of the INA and are in fact *still in the process* of receiving just such an individualized assessment. In any event, as discussed, the Supreme Court in *Lopez* v. *Davis* affirmed the authority of agencies ''to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority.'' 531 U.S. 230, 244 (2001). DHS is able to invoke the automatic stay with respect to aliens whom it believes are potentially dangerous, or are at risk of absconding prior to the conclusion of removal proceedings, or whose cases DHS believes otherwise present important considerations calling for detention during the course of removal proceedings. The INA in no way withheld authority for the Attorney General to rely on rulemaking in making the discretionary judgment about whether such aliens must be released during the brief period of time required for DHS to pursue an expedited appeal of the immigration judge's decision and for the Board to render a decision on the custody issue.

In any event, as discussed above, the Department has amended the final rule to provide additional limitations on the duration of the automatic stay both with respect to custody decisions of the immigration judges on appeal to the Board, and with respect to decisions of the Board that are referred for review by the Attorney General. The multiple time limits built into the final rule plainly obviate any argument that the detention authorized pursuant to the automatic stay is in any way ''indefinite,'' much less ''potentially permanent'' as the Supreme Court found in *Zadvydas* with respect to the post-final order detention of an alien whom the government was unable to remove.

After the expiration of the automatic stay pursuant to the strict time limits set forth in this rule, the IJ's custody order will not be stayed unless the IJ, the Board, or the Attorney General orders a discretionary stay pending a final decision. Such case-by-case discretionary stays have long been available in immigration proceedings, and may be granted consistent with applicable legal standards during the time needed to allow the decisionmaker to complete action on a pending appeal.

Due Process—Meaningful Opportunity To Challenge Detention

Several commenters also contended that the interim rule deprives aliens of due process by preventing them from having a meaningful opportunity to challenge their detention before a neutral arbiter. In their view, DHS should not be able to override an immigration judge's individualized decision to order an alien's immediate release by invoking an automatic stay in connection with DHS's expedited appeal to the Board challenging the immigration judge's release order. One commenter stated, ''the [DHS] has complete control of a noncitizen's custody status for months * * *. The regulation gives local [DHS] personnel the unilateral authority to hold noncitizens in detention for significant periods of time regardless of the decision rendered by an immigration judge.''

In response, the Department notes that the INA places no restrictions on the Attorney General's or the Secretary's discretion to prescribe procedures for the adjudication of bond requests by aliens during removal proceedings, and agencies are generally afforded great latitude in organizing themselves internally and in developing procedures for carrying out their responsibilities. *See Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council, Inc.,* 435 U.S. 519, 544 (1978) (''agency should normally be allowed to exercise its administrative discretion in deciding how, in light of internal organization considerations, it may best proceed to develop the needed evidence and how its prior decision should be modified in light of such evidence as develops.''); *Dia* v. *Ashcroft,* 353 F.3d 228, 238 (3d Cir. 2003) (en banc) (''The Supreme Court has forcefully emphasized that '[a]bsent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their

multitudinous duties.' '') (*citing Vermont Yankee*).

This is particularly true in the immigration area. In finding that individual bond hearings are not required to detain aliens during proceedings pursuant to section 236(c) of the INA, the Supreme Court in *Kim* stated that ''when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.'' 538 U.S. at 528; *see also id.* at 521 (''In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.'') (quoting *Matthews* v. *Diaz,* 426 U.S. 67, 79–80 (1976)); *INS* v. *Aguirre-Aguirre,* 526 U.S. 415, 425 (1999) (''judicial deference to the Executive Branch is especially appropriate in the immigration context where officials exercise especially sensitive political functions that implicate questions of foreign relations''); *Matthews* v. *Diaz,* 426 U.S. 67, 81–82 (1976) (''Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution'').

The Act itself contains no requirement whatsoever for the immigration judges to conduct custody reviews for aliens detained by DHS during the pendency of removal proceedings. In contrast to section 240 of the INA, which expressly refers to the role of immigration judges in conducting removal proceedings, section 236 of the INA makes no reference at all to the immigration judges, but vests the discretion in the Attorney General to determine the processes and standards for exercising discretion in determining which aliens to release from custody during the pendency of proceedings, and under what conditions of release. Thus, the authority that the immigration judges exercise in conducting custody reviews is drawn solely from the delegation of authority by the Attorney General by regulation—including 8 CFR 1003.19, the very rule being amended in this final rule.

The Attorney General and the Secretary have exercised their discretion to create separate but interrelated systems for determining whether aliens in removal proceedings ought to be released. Under this regime, an initial custody determination is made by DHS enforcement officials acting in an adjudicative capacity. *See* 8 CFR 236.1(a). The Supreme Court has affirmed the combination of adjudicative and investigative roles in the former INS. See *Marcello* v. *Bonds,* 349 U.S. 302, 311 (1955).

Though allowing further review of DHS custody decisions is not required by law, the Attorney General has chosen to provide that, if an alien is dissatisfied with that determination, he or she may ask an immigration judge to review the conditions of his or her custody, subject to further review by the Board. *See* 8 CFR 1003.19(c)(1)–(3), 1236.1(d)(1). The immigration judges and the Board are delegates of the Attorney General in carrying out his authority under the INA. See INA § 101(b)(4), 8 U.S.C. 1101(b)(4) (''An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe''); 8 CFR 1003.1(a)(1) (''The Board members shall be attorneys appointed by the Attorney General to act as the Attorney General's delegates in the cases that come before them.''); *see also Matter of Hernandez-Casillas,* 20 I&N Dec. 262, 289 n.9 (BIA 1990; A.G. 1991). Under the Attorney General's regulations, the decision of the immigration judge is not the final step in the agency proceedings because it is subject to appeal to the Board, and ultimately to the possibility of review by the Attorney General.

In most cases, an immigration judge's order granting an alien release will result in the alien's release upon the posting of bond or on recognizance, in compliance with the immigration judge's decision. The Attorney General has determined, however, that certain bond cases require additional safeguards before an alien is released during the pendency of removal proceedings against him or her. In these cases, the immigration judge's order is only an interim one, pending review and the exercise of discretion by another of the Attorney General's delegates, the Board. Barring review by the Attorney General, it is the Board's decision that the Attorney General has designated as the final agency action with respect to whether the alien merits bond. Thus, the Attorney General made an operational decision under section 236(a) of the INA with respect to how his discretion should be exercised in a limited class of cases where DHS, which now has independent statutory authority in this area, had sought to detain the alien without bond or with a bond of $10,000 or more and disagrees with the immigration judge's interim custody decision. *See* 66 FR 54909 (Oct. 31, 2001); 63 FR 27441, 27448 (May 19, 1998); 8 CFR 1003.19(i)(2). The Attorney General provided, as a matter of discretion, that the alien should continue to be detained for a period of time necessary to allow for the Board to review the case. Section 1003.19(i)(2) provided that, when this procedure is invoked by DHS as a matter of discretion, the immigration judge's decision is not a final decision; instead, in those cases the Board, not the immigration judge, issues the final agency action. Moreover, in those rare cases where the Attorney General reviews a custody decision by the Board, the rule also provides that the decision of the Board is not final while it is under review by the Attorney General. *See* 66 FR at 54910. This rule may properly be viewed as a categorical discretionary denial of early release to this class of aliens. *See Lopez* v. *Davis,* 531 U.S. 230 (2001).

This additional safeguard is needed for all the reasons stated by the Attorney General in connection with the adoption of the earlier automatic stay rules in 2001 and 1998. A custody decision that allows for immediate release is effectively final if the alien turns out to be a serious flight risk, a danger to the community, or otherwise did not merit bond. DHS's right to appeal is effectively vitiated if the alien absconds after being released pursuant to the immigration judge's order—and, as noted above, over 52,000 aliens, some 45% of the total number of aliens who were released on bond or on personal recognizance during the pendency of their proceedings, failed to appear for their removal hearings in just the last 4 years. Although the automatic stay is not available in all cases, and is invoked by DHS only in a relatively small number of cases that are within the scope of the rule, the automatic stay provides an important safeguard to the public in those cases where DHS determines that it should be invoked. The rule preserves the status quo briefly while DHS seeks expedited appellate review of the immigration judge's custody decision. The stay provides the Board an opportunity to review the case in an expedited but orderly fashion, on a record, with full briefing, and to resolve the conflicting views of DHS and the immigration judge with respect to whether the alien merits bond. The Board retains full authority to accept or reject DHS's contentions on appeal. The Board's rejection of a number of INS and DHS custody appeals since the interim rule was promulgated demonstrates the Board's independence in exercising this authority.

The rule also briefly preserves the stay for the rare case in which the Attorney General will personally review a case referred to him by a senior DHS official. For example, in *Matter of D-J-,* 23 I&N Dec. at 581, DHS

successfully invoked the automatic stay in order to overturn decisions that had excluded consideration of national security concerns pertaining to the granting or denying of release for aliens pending completion of removal proceedings. For cases personally reviewed by the Attorney General, however, this rule provides that the automatic stay will expire 15 business days after the case is referred to the Attorney General. The Attorney General may grant a discretionary stay pending final disposition of the appeal.

The automatic stay rule does not deprive an alien of the opportunity meaningfully to challenge his or her detention during the pendency of removal proceedings or an individualized determination of whether the alien was a flight risk or danger to the community. The alien in *Kim*, of course, received no such individualized determination, and yet the statutory scheme of mandatory detention of criminal aliens was upheld. Moreover, unlike *Kim*, in cases involving the automatic stay where release is a matter of discretion, the alien receives several individualized, discretionary assessments of whether he or she merits bond. As discussed, the alien first receives an individualized assessment by DHS, followed by an individualized assessment by an immigration judge, and then an individualized assessment by the Board. The commenters pointed to no authority suggesting that an alien must be released while the Attorney General and his delegates are still in the process of determining whether the alien merits bond. In fact, the opposite has long been the law. *See Carlson* v. *Landon,* 342 U.S. 524, 538 (1952) (''Detention is necessarily a part of this deportation procedure. Otherwise aliens arrested for deportation would have opportunities to hurt the United States during the pendency of deportation proceedings.'').

In sum, the automatic stay rule establishes a process, well within the discretion of the Attorney General, to regulate the workings of the decision-making process and provide for the opportunity for review not only by the immigration judge but also by the Board in certain cases or even by the Attorney General personally before an alien is released from custody. It is the Attorney General's prerogative to establish a process to reconcile opposing decisions by DHS and an immigration judge with respect to whether an alien should be released prior to a decision by the Board on review. There is nothing in the Due Process Clause requiring that an alien must be released from custody immediately upon the issuance of an initial decision by an immigration judge. Instead, the ultimate decision regarding the alien's custody will be structured and rendered according to the processes established under § 1003.19(i)(2).

Principles of International Law

Another commenter suggested that the interim rule violates international laws and principles prohibiting arbitrary detention. The commenter cites Article 9 of the *International Covenant on Civil and Political Rights* (ICCPR), ratified by the United States in 1992, which states, ''Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.'' The comment also cites a 1988 United Nations General Assembly resolution which states, ''a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.'' *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,* G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988). The commenter believes that, by allowing a DHS official to, in effect, ''overturn'' the decision of the immigration judge while it is being appealed, the effectiveness of the immigration judge's determination is rendered meaningless.

In response, the Department notes that the automatic stay rule does not conflict with the provisions that the commenter cites. The rule does not render the immigration judge's decision meaningless, but simply provides a process for DHS, in certain cases, to be able to present its arguments in favor of continued detention to the Board, the reviewing authority constituted by the Attorney General, before DHS is obligated to release the alien. Allowing for an expedited appeal to the Board is an integral part of the Attorney General's process for reviewing the custody decisions initially made by DHS. We also note that unlike the specific constitutional and statutory authority for the detention of aliens in connection with the completion of removal hearings against those aliens, discussed at length in the responses to other comments, *cf. Matter of D-J-,* 23 I&N Dec. at 584 & n.3, the obligations cited by the commenter are not binding as a matter of domestic law.

Scope of the Interim Rule

In support of the proposition that the interim rule is too broad, several commenters contrasted the rule with the provisions of section 236A of the INA, 8 U.S.C. 1226a, which was enacted by Congress in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law No. 107–56, 115 Stat. 272 (Oct. 26, 2001). Specifically, commenters suggested that the rule goes beyond the detention parameters set by Congress in the provisions of section 236A of the INA, which authorizes DHS to hold an alien in certain circumstances for no more than 7 days without the alien's being charged with an immigration or criminal offense. Beyond that, the commenters note, it authorizes the Attorney General and Deputy Attorney General to indefinitely hold an alien after certifying that there are ''reasonable grounds to believe'' that the alien is involved in terrorism. In contrast, the commenters noted that the automatic stay regulation can be invoked for any immigration offense whenever DHS sets a bond of $10,000 or more or determines that no conditions of release are appropriate for the alien. The commenters suggest the interim rule belies the narrow case-by-case review standards set forth in section 236A of the INA and, moreover, that it is not narrowly tailored to achieve a legitimate government interest.

In response, the Department notes that these commenters confused the automatic stay, and the statutory authority upon which it is based, with the additional detention authority granted to the Attorney General in section 236A of the INA. At the outset, it is important to note that this authority under section 236A was granted *in addition* to the already broad detention authority possessed by the Attorney General under section 236 of the INA, which is discussed at length in previous portions of this supplementary information. Nothing in section 236A purports to limit the Attorney General's authority under section 236; in fact, section 236A(c) expressly provides that the provisions of section 236A do not apply to any other provision of the INA. Further, section 236A provides the Attorney General with broad authority in national security cases to detain aliens for a period commencing even before removal proceedings are commenced, and continuing after proceedings are terminated. By contrast, the automatic stay is in effect only while proceedings are pending, and then only

until the Board (or in certified cases the Attorney General) can review the immigration judge's discretionary custody decision. Aliens subject to section 236A have no right to an individualized determination by an immigration judge.

Moreover, as discussed above, the Supreme Court's decision in Kim has made clear that the government is not obligated to follow the least burdensome means when dealing with deportable aliens. 538 U.S. at 528.

DHS's Decisionmaking Process To Invoke the Automatic Stay

The commenters contended that hundreds of decentralized DHS officers would be operating with low accountability to set the bond amounts which, based on the officer's discretion, could easily be set at $10,000 or higher. The utilization of the automatic stay provisions, the commenters assert, would thereafter ensure that aliens could be held in DHS detention for many months. Commenters also suggested that the regulation was indiscriminate in that it could be applied regardless of the nature of the immigration offense.

Another commenter who generally supported the interim rule contended that there would be little reason for immigration judges to render decisions in bond cases if DHS filed automatic stays on a routine basis. The commenter favored a selective application of the automatic stay rule in order to prevent the diminution of the immigration judge's role in bond proceedings. The comment suggested that some form of DHS review be implemented to prevent any routinization, for example, by requiring that the initial decision by DHS to invoke an automatic stay in a case should be reviewed by another DHS official not involved in that particular case.

The Department has considered these comments, but declines to abandon or modify the automatic stay rule in response to these objections except, as noted above, to provide that the decision to file Form EOIR–43 to invoke the automatic stay will be subject to the discretion of the Secretary, and that a senior legal official of DHS, in order to preserve the automatic stay, must approve the filing of the notice of appeal and the use of the automatic stay in the case.

Subject to these important qualifications, the final rule preserves the discretion of DHS to determine on a case-by-case basis whether it is appropriate to invoke the automatic stay. DHS does not invoke the automatic stay in every case in which a DHS officer had set a bond of at least $10,000 or had denied bond but an immigration judge orders the alien's release on a lower bond or on recognizance. Invoking the automatic stay—*i.e.*, calling for expedited review by the Board and not merely by an immigration judge before an alien is required to be released—is appropriately left within the sound discretion of the Secretary and his enforcement officials, and the final decision will be approved by a senior legal official of DHS, after consideration of the circumstances of the case and the applicable custody standards. Within these parameters, the Secretary and DHS officials are free to implement internal guidance regarding the circumstances in which an automatic stay will or will not be invoked. In a case in which the automatic stay has been invoked, if a senior legal official fails to certify that the official has approved the filing of a notice of appeal within ten business days after the immigration judge's decision, the automatic stay will lapse, although DHS will still be free to seek a discretionary stay pursuant to 8 CFR 1003.19(i)(1).

DHS's detention of aliens during the pendency of removal proceedings necessarily incurs great costs to the government, and necessarily requires the exercise of judgment in the allocation of scarce funds and limited detention spaces with respect to a very large number of aliens who must either be detained or released by DHS, whether during the pendency of removal proceedings or after the issuance of final orders of removal for those aliens. Since the interim rule and this final rule provide for DHS to invoke the automatic stay provision as an exercise of discretion, with respect to the continued detention of aliens who are not subject to mandatory detention, DHS will inevitably be obligated to consider such competing priorities and limited resources in each case in deciding whether or not to pursue an appeal in an automatic stay case. Each year, tens of thousands of aliens are released on bond or on recognizance after being placed into removal proceedings, yet in the nearly 4 years since the interim rule was promulgated in 2001 there have only been a few hundred custody appeals adjudicated by the Board in which DHS (or the former INS) invoked the automatic stay rule in connection with an appeal of an immigration judge's custody decision.

The argument that the automatic stay rule should be restricted only to certain kinds of immigration charges ignores the fact that the appropriateness of an alien's release during the pendency of removal proceedings against the alien is not necessarily related to the underlying immigration charge. In many cases, aliens in removal proceedings present obvious risks of flight without regard to the particular charges against them; large numbers of absconding aliens had been charged, for example, as an overstay or as being present in the United States without inspection or parole. As noted above, the Inspector General's report found that the former INS was able to effectuate the removal of only 3% of non-detained aliens who had unsuccessfully sought asylum, after those aliens received final orders of removal. Moreover, experience amply demonstrates that initial predictions by DHS or an immigration judge as to an alien's flight risk often are contradicted in practice, since over 52,000 aliens (45%) who were released on bond or on recognizance in the last 4 fiscal years after the initiation of removal proceedings failed to appear for their scheduled removal hearings. An alien charged with overstaying a visa may, depending on the case, be a serious flight risk, a danger to the community, or even a potential threat to the national security. In many cases, DHS may choose only to bring a ''lesser'' charge such as overstaying a visa, rather than a more serious charge of deportability or inadmissibility, since the end result—removal of the alien from the United States—would be the same in any event and the government would not be required to bear the greater expense of establishing and adjudicating the merits of the more serious removal charge.

The Prior Stay Rule

Five commenters contended that the pre-existing regulatory provision for obtaining a stay of a custody decision already achieved the goals of the interim rule. The goal of the interim rule, as expressed by several of these commenters, was to remedy the concern over the ''bureaucratic challenge of timely filing stay motions by the [DHS] and issuance of interim stay by the Board prior to bond being posted for a noncitizen.'' To that end, commenters challenged the Department's assertion in the supplemental language that the preexisting process would result in a rush to the Board clerk's office to file stay motions.

Specifically, the commenters stated that the Board had already granted stays on an interim basis, as requested by the former INS, now DHS, via brief summary motions. The Board, the commenters note, had also granted the former INS time thoroughly to brief its position and even to add evidence to the record. Moreover, the commenters

contended that the interim rule exaggerated the possibility of the government's releasing an alien before DHS can file a motion for a stay because the detainees are in DHS custody to begin with, and they asserted that, under the preexisting rules, there had been no incidents of release because of the Board's untimely response to a DHS stay request. Three commenters provided the same example of two aliens who were held on security-related suspicions and were ultimately released on bond, contending that the individuals would have been held for months longer, without necessity, if the interim rule were in effect at that time. Several commenters also found the tone of the supplemental language to be disrespectful to the Board, perceiving that the language implied that the Board was not diligent in its role under the pre-existing stay provision.

In response, the Department notes that the commenters substantially downplay the unprecedented circumstances during which the Attorney General developed and promulgated the interim automatic stay rule in 2001, at a time when a substantial influx of aliens being detained in connection with investigations or removal proceedings were expected to seek orders of release from the immigration judges. The automatic stay process was intended to provide an orderly process for the expedited consideration of custody decisions in those cases where the former INS (now DHS) had determined that an alien should not be released during the period of time necessary for DHS to pursue an expedited appeal to the Board.

Indeed, the immediate circumstances of the fall of 2001 were not the only impetus for promulgation of the interim rule. The interim rule was but one means to contend with the enormous growth of the immigration-related administrative caseload, which in recent years has swelled dramatically and has continued to mount since the issuance of the interim rule: From fiscal year 2001 to fiscal year 2004, the number of new cases before the immigration judges grew from 282,000 to approximately 300,000, and the number of cases received by the Board jumped from 28,000 to 43,000. Since the interim rule was promulgated in 2001, the Attorney General has taken other steps to improve the processes for the Board's adjudicatory functions and the timeliness of the Board's disposition of pending matters in general. *See, e.g., Board of Immigration Appeals: Procedural Reforms to Improve Case Management*, 67 FR 54878 (Aug. 26, 2002). Moreover, as suggested by the Supreme Court's analysis in *Vermont Yankee* and *Lopez* v. *Davis*, and in the face of such growing pressures on the adjudicatory process, the Attorney General is free to use the rulemaking process to make certain determinations on a categorical basis regarding the stay process and is not required to obligate the Board to expend its energies engaging in individualized, case-by-case determinations regarding the granting or the length of discretionary stays pending review by the Board in every case. Such case-by-case adjudications of discretionary stay motions can often be time consuming, labor intensive, and disruptive of the adjudicatory process. Rather, the Attorney General has reasonably determined that the Board's energies are better spent in focusing on the merits of the custody appeals themselves.

Even though the process established in the interim rule is sound and is a measured response to maintain an orderly adjudicatory system involving multiple levels of administrative review and a challenging caseload, the Department has determined to make several modifications in the automatic stay process, as discussed above. Among other things, these changes limit the duration of the automatic stay in several respects, and highlight the need for DHS to obtain a discretionary stay under the provisions of § 1003.19(i)(1) in those cases where, for whatever reason, a custody appeal to the Board cannot be resolved within the time allowed for an automatic stay.

Suggestions for a Narrower Stay Rule

As a related point, several commenters suggested that the Attorney General should have implemented a more limited automatic stay measure in lieu of the provisions set forth in the interim rule. Specifically, the commenters suggested implementing a stay procedure that is triggered by notice to the immigration judge, with DHS having only until close of business the next day to file a motion to stay with the Board.

One commenter suggested that the provision be more limited in time and should follow the model of section 236A of the INA, as enacted by the PATRIOT Act—specifically, that it be triggered only by personal authorization of the Attorney General or Deputy Attorney General.

In response, the Department has considered the alternative suggestions of the commenters but declines to adopt them for the same reasons that have already been explained in prior portions of this supplementary information. The obligation for DHS to file a case-by-case motion for stay within one day of an immigration judge's decision, after having provided notice to the immigration judge of DHS's intent to seek a stay, would potentially be even more onerous than the preexisting case-by-case process that the Attorney General sought to address by implementing the interim rule amending the automatic stay provision. Requiring personal consideration of stay issues by the Attorney General or the Deputy Attorney General in every case would be impracticable as well as completely unnecessary, given that the purpose of the automatic stay rule is to provide a means for DHS to seek an expedited review of custody decisions *by the Board* before being obligated to release certain detained aliens whom DHS has strong reason to believe should not be released. The automatic stay rule provides a separate process in connection with the rare instances of the Attorney General's review of custody decisions by the Board, and this final rule also implements a refinement in that process to tailor the duration of the automatic stay.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule extends the scope of the existing automatic stay provision to cover cases in which DHS has denied release of an alien pending the completion of removal proceedings or has set a bond of $10,000 or more, in order to allow DHS to maintain the status quo while it pursues an expedited appeal of an order to release the alien from custody. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

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 million 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of

1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million 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.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 1003

Administrative practice and procedure, Immigration, Organization and functions (government agencies).

■ Accordingly, chapter V of title 8 of the Code of Federal Regulations is amended as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority citation for part 1003 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1229, 1229a, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 2. Section 1003.6 is amended by adding new paragraphs (c) and (d), to read as follows:

§ 1003.6 Stay of execution of decision.

* * * * *

(c) The following procedures shall be applicable with respect to custody appeals in which DHS has invoked an automatic stay pursuant to 8 CFR 1003.19(i)(2).

(1) The stay shall lapse if DHS fails to file a notice of appeal with the Board within ten business days of the issuance of the order of the immigration judge. DHS should identify the appeal as an automatic stay case. To preserve the automatic stay, the attorney for DHS shall file with the notice of appeal a certification by a senior legal official that—

(i) The official has approved the filing of the notice of appeal according to review procedures established by DHS; and

(ii) The official is satisfied that the contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent.

(2) The immigration judge shall prepare a written decision explaining the custody determination within five business days after the immigration judge is advised that DHS has filed a notice of appeal, or, with the approval of the Board in exigent circumstances, as soon as practicable thereafter (not to exceed five additional business days). The immigration court shall prepare and submit the record of proceedings without delay.

(3) The Board will track the progress of each custody appeal which is subject to an automatic stay in order to avoid unnecessary delays in completing the record for decision. Each order issued by the Board should identify the appeal as an automatic stay case. The Board shall notify the parties in a timely manner of the date the automatic stay is scheduled to expire.

(4) If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal. However, if the Board grants a motion by the alien for an enlargement of the 21-day briefing schedule provided in § 1003.3(c), the Board's order shall also toll the 90-day period of the automatic stay for the same number of days.

(5) DHS may seek a discretionary stay pursuant to 8 CFR 1003.19(i)(1) to stay the immigration judge's order in the event the Board does not issue a decision on the custody appeal within the period of the automatic stay. DHS may submit a motion for discretionary stay at any time after the filing of its notice of appeal of the custody decision, and at a reasonable time before the expiration of the period of the automatic stay, and the motion may incorporate by reference the arguments presented in its brief in support of the need for continued detention of the alien during the pendency of the removal proceedings. If DHS has submitted such a motion and the Board is unable to resolve the custody appeal within the period of the automatic stay, the Board will issue an order granting or denying a motion for discretionary stay pending its decision on the custody appeal. The Board shall issue guidance to ensure prompt adjudication of motions for discretionary stays. If the Board fails to adjudicate a previously-filed stay motion by the end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes for the Board to decide whether or not to grant a discretionary stay.

(d) If the Board authorizes an alien's release (on bond or otherwise), denies a motion for discretionary stay, or fails to act on such a motion before the automatic stay period expires, the alien's release shall be automatically stayed for five business days. If, within that five-day period, the Secretary of Homeland Security or other designated official refers the custody case to the Attorney General pursuant to 8 CFR 1003.1(h)(1), the alien's release shall continue to be stayed pending the Attorney General's consideration of the case. The automatic stay will expire 15 business days after the case is referred to the Attorney General. DHS may submit a motion and proposed order for a discretionary stay in connection with referring the case to the Attorney General. For purposes of this paragraph and 8 CFR 1003.1(h)(1), decisions of the Board shall include those cases where the Board fails to act on a motion for discretionary stay. The Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board.

■ 3. Section 1003.19 is amended by revising paragraph (i), to read as follows:

§ 1003.19 Custody/bond.

* * * * *

(i) *Stay of custody order pending appeal by the government—*

(1) *General discretionary stay authority.* The Board of Immigration Appeals (Board) has the authority to stay the order of an immigration judge redetermining the conditions of custody of an alien when the Department of Homeland Security appeals the custody decision or on its own motion. DHS is entitled to seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time.

(2) *Automatic stay in certain cases.* In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR–43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR–43 is subject to the discretion of the Secretary.

Dated: September 25, 2006.

Alberto R. Gonzales,

Attorney General.

[FR Doc. E6–16106 Filed 9–29–06; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 420

RIN 1904–AB63

State Energy Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is publishing a final rule that amends the State Energy Program regulations to incorporate certain changes made to the DOE-administered formula grant program by the Energy Policy Act of 2005 (EPACT 2005).

DATES: This rule is effective November 1, 2006.

FOR FURTHER INFORMATION CONTACT: Eric W. Thomas, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, State Energy Program, EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2242, e-mail: *eric.thomas@ee.doe.gov,* or Chris Calamita, Esq., U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–1777, e-mail: *Christopher.Calamita@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 123 of the Energy Policy Act of 2005 (EPACT 2005) (Pub. L. 109–58) amended Title III, Part D of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163), which pertains to State energy conservation plans. The submission of such plans is required for participation in the DOE State Energy Program for providing formula grants to States for a wide variety of energy efficiency and renewable energy initiatives. This final rule amends the DOE State Energy Program regulations in Part 420 of Title 10 of the Code of Federal Regulations to incorporate the EPACT 2005 amendments.

Section 123 of EPACT 2005 amended section 362 of EPCA (42 U.S.C. 6322) to provide, in a new subsection (g), that the Secretary of Energy shall, at least once every three years, invite the Governor of each State that has submitted a State energy conservation plan to DOE to review and, if necessary, revise the State plan. EPACT 2005 provides that in conducting this review, the Governor should consider the energy conservation plans of other States within the region, and identify opportunities and actions that may be carried out in pursuit of common energy conservation goals. With the issuance of this final rule, DOE amends 10 CFR 420.13 to include a new paragraph (d) that sets forth this new statutory requirement.

Section 123 of EPACT 2005 also amended section 364 of EPCA (42 U.S.C. 6324) to provide that the energy conservation goal in State plans must call for a 25 percent or more improvement in the efficiency of State energy use in calendar year 2012 as compared to calendar year 1990. Previously, EPCA required a State energy conservation plan goal consisting of a 10 percent or more improvement in energy efficiency in calendar year 2000, as compared to calendar year 1990. DOE is amending 10 CFR 420.13(b)(3) to include the new efficiency goal.

II. Rationale for Final Rulemaking

DOE is issuing today's action as a final rule, without prior notice and opportunity for public comment, because DOE is incorporating the EPACT 2005 revisions to the State Energy Program without substantive change and this action is non-discretionary. In this circumstance, the provision of notice and an opportunity for comment is unnecessary.

III. Procedural Requirements

A. Review Under Executive Order 12866, ''Regulatory Planning and Review''

This final rule is not a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, (68 FR 7990) to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. The Department has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.* Because this final rule consists of regulatory amendments for which a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

C. Review Under the Paperwork Reduction Act of 1995

This rulemaking will impose no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

DOE has determined that this rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.5 of Appendix A to Subpart D, 10 CFR

part 1021, which applies to rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE examined this rule and determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b).) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov)*. This final rule does not contain an intergovernmental mandate or a mandate that may result in the expenditure of $100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). This final rule has been reviewed by DOE under the OMB and DOE guidelines and it has been concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action,

the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 420

Energy conservation, Grant programs—energy, Technical assistance.

Issued in Washington, DC, on September 21, 2006.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, the Department of Energy amends chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 420—STATE ENERGY PROGRAM

■ 1. The authority citation for part 420 continues to read as follows:

Authority: Title III, part D, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

■ 2. Section 420.13 of subpart B is amended by:

■ a. Revising paragraph (b)(3); and

■ b. Adding a new paragraph (d).

The revision and addition read as follows:

§ 420.13 Annual State applications and amendments to State plans.

* * * * *

(b) * * *

(3) With respect to financial assistance under this subpart, a goal, consisting of an improvement of 25 percent or more in the efficiency of use of energy in the State concerned in the calendar year 2012, as compared to the calendar year 1990, and may contain interim goals;

* * * * *

(d) The Secretary, or a designee, shall, at least once every three years from the submission date of each State plan, invite the Governor of the State to review and, if necessary, revise the energy conservation plan of such State. Such reviews should consider the energy conservation plans of other States within the region, and identify opportunities and actions that may be carried out in pursuit of common energy conservation goals.

[FR Doc. E6–16169 Filed 9–29–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25713; Directorate Identifier 97–ANE–09; Amendment 39–14780; AD 97–06–13R1]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Models RB211 Trent 892, 884, 877, 875, and 892B Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; rescission.

SUMMARY: This amendment rescinds airworthiness directive (AD) 97–06–13 for Rolls-Royce plc (RR) models RB211 Trent 892, 884, 877, 875, and 892B series turbofan engines. That AD requires inspecting and replacing certain angle gearbox and intermediate gearbox hardware, and on-going repetitive inspections of the magnetic chip detectors. That AD resulted from reports of loss of oil from the angle drive upper shroud tube, the intermediate gearbox housing, the external gearbox lower bevel box housing, and by reports of bearing failures. We intended the requirements of that AD to prevent loss of oil, which could cause an engine fire, and to prevent in-flight engine shutdowns and airplane diversions caused by oil loss and from bearing failures. Since we issued that AD, we determined that the inspections and replacements required by that AD are no longer required to correct an unsafe condition.

DATES: This AD becomes effective October 2, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by rescinding an existing AD, AD 97–06–13; Amendment 39–9970, for RR models RB211 Trent 892, 884, 877, 875, and 892B series turbofan engines. That AD requires inspecting and replacing certain angle gearbox and intermediate gearbox hardware, and on-going repetitive inspections of the magnetic chip detectors. We published the proposed NPRM in the **Federal Register** on April 5, 2006 (71 FR 17035).

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to comment on the proposed NPRM rescission. We received no comments on the proposal.

Docket Number Change

We are transferring the docket for this AD to the Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2006–25713. The old Docket No. became the Directorate Identifier, which is 97–ANE–09. This final rule might get logged into the DMS docket, ahead of the previously collected documents from the old docket file, as we are in the process of sending those items to the DMS.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD rescission as proposed. We are rescinding this AD because we determined that we no longer need the inspections and replacements required

by that AD to correct an unsafe condition.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–9970 (62 FR 23339, April 30, 1997) and by adding the following new airworthiness directive:

97–06–13R1 Rolls-Royce plc: Amendment 39–14780. Docket No. FAA–2006–25713; Directorate Identifier 97–ANE–09.

Effective Date

(a) This rescission of AD 97–09–13 becomes effective October 2, 2006.

Affected ADs

(b) This AD rescinds AD 97–06–13, Amendment 39–9970.

Applicability

(c) This action applies to Rolls-Royce plc models RB211 Trent 892, 884, 877, 875, and 892B series turbofan engines.

Issued in Burlington, Massachusetts, on September 25, 2006.

Peter A. White,

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

[FR Doc. E6–16045 Filed 9–29–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9273]

RIN 1545–AX65

Stock Transfer Rules: Carryover of Earnings and Taxes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (TD 9273) that were published in the **Federal Register** on Tuesday, August 8, 2006 (71 FR 44887) addressing the carryover of certain tax attributes, such as earnings and profits and foreign income tax accounts, when two corporations combine in a corporate reorganization or liquidation that is described in both section 367(b) and section 381 of the Internal Revenue Code (Code).

DATES: This correction is effective August 8, 2006.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under sections 367(b) and 381 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9273) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9273), which was the subject of FR Doc. 06–6740, is corrected as follows:

On page 44889, column 3, in the preamble, under the paragraph heading *''B. Paradigm Based on Pooling Rather Than Look-Through''*, first paragraph of the column, line 11, the language ''through-corporation included a'' is corrected to read ''through corporation included a''.

Guy R. Traynor,

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

[FR Doc. E6–16126 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9273]

RIN 1545–AX65

Stock Transfer Rules: Carryover of Earnings and Taxes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains correction to final regulations (TD 9273) that were published in the **Federal Register** on Tuesday, August 8, 2006 (71 FR 44887) addressing the carryover of certain tax attributes, such as earnings and profits and foreign income tax accounts, when two corporations combine in a corporate reorganization or liquidation that is described in both section 367(b) and section 381 of the Internal Revenue Code (Code).

DATES: The correction is effective August 8, 2006.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under

sections 367(b) and 381 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9273) contain an error that may prove to be misleading and are in need of clarification.

Correction of Publication

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

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

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

§ 1.367(b)–7 [Corrected]

■ Section 1.367(b)–7(e)(2) *Example 4.*(iii)(C) in the following table under the heading ''Foreign taxes'' the third column heading ''Taxes avaialable'' is corrected to read ''Foreign taxes available''.

* * * * *

Guy R. Traynor,

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

[FR Doc. E6–16116 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051014263–6249–04; I.D. 120805A]

RIN 0648–AU00

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Correction

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

ACTION: Correction.

SUMMARY: On August 22, 2006, a temporary rule extension was published in the **Federal Register** intending to extend the 2006 optimum yield (OY) for darkblotched rockfish caught in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. This correction changes the ''ACTION'' and ''DATES'' sections of that rule to remove references to a temporary rule and make the amendments published on August 22, 2006, effective August 27, 2006.

DATES: The amendments to 50 CFR part 660, subpart G, published at 71 FR 48824, August 22, 2006, are effective August 27, 2006.

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

On August 22, 2006 (71 FR 48824), a temporary rule extension was published in the **Federal Register** intending to extend the 2006 optimum yield (OY) for darkblotched rockfish caught in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California.

Acceptable biological catches (ABCs) and OYs are established for each year. Management measures are established at the start of the biennial period, and are adjusted throughout the biennial management period, to keep harvest within the OYs. At the Pacific Council's October 31 - November 4, 2005, meeting in San Diego, CA, the Pacific Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommended a reduction of the 2006 darkblotched rockfish OY to 200 mt for March through December 2006. The management measures for March through December 2006 were proposed on December 19, 2005 (70 FR 75115), and implemented via the final rule published on February 17, 2006 (71 FR 8489).

The 2006 darkblotched rockfish OY of 200 mt is an interim measure pursuant to section 305(c) of the Magnuson-Stevens Act, in effect while the rebuilding plan (now referred to as Amendment 16–4) is being developed and implemented. Under the provisions of section 305(c)(3) of the Magnuson-Stevens Act, interim measures shall remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the **Federal Register** for an additional period of not more than 180 days, provided the public has had an opportunity to comment on the interim measures, and the Council is actively preparing a plan amendment to address rebuilding on a permanent basis. The public has been provided an opportunity to comment on the interim measures in the proposed rule (70 FR 75115, December 19, 2005), and NMFS recently announced the availability of Amendment 16–4, for public review (71 FR 25051, September 11, 2006). The proposed rule for Amendment 16–4 and the 2007–2008 specifications and management measures are expected to publish in September 2006 with a final rule expected to publish in November 2006, and become effective January 1, 2007. In addition, the Court's Order in *Natural Resources Defense Council (NRDC)* v. *NMFS*, 421 F.3d 872 (9th Cir. 2005) dated December 8, 2005, requires NMFS to implement a darkblotched rockfish quota for the entire 2006 fishing year pursuant to section 305(c). Because Amendment 16–4 has not completed its public and Agency review period, and the interim measure published with the February 17, 2006 final rule (71 FR 8489) expired on August 27, 2006, NMFS published an extension to the darkblotched rockfish OY beyond the first 180-day period (71 FR 48824, August 22, 2006).

However, the ''ACTION'' and ''DATES'' sections of the August 22, 2006 (71 FR 48824), **Federal Register** notice need to be corrected. Because the ''DATES'' section of the February 17, 2006 final rule (71 FR 8489), which published the revised darkblotched rockfish OY for the first 180-day period, never stated that the darkblotched rockfish OY within that final rule was a temporary action. As a result, the darkblotched rockfish OY published as part of the ABC/OY tables appeared to be a permanent final action changing 50 CFR part 660, subpart G. However, the preamble to the February 17, 2006 final rule (71 FR 8489) made clear that the darkblotched rockfish OY was a temporary action. Therefore, the temporary rule extension published on August 22, 2006 (71 FR 48824) had no temporary action to extend for a second 180-day period. This correction changes the ''ACTION'' and ''DATES'' section of the August 22, 2006 (71 FR 48824) rule to remove references to a temporary rule and make the changes effective August 27, 2006.

Classification

Pursuant to 5 U.S.C.553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary. This rule corrects an incomplete effective date and makes the effective date consistent with the preamble and record for the temporary/interim rulemaking. Notice and comment is unnecessary because the legal authority under which the February 17, 2006 final rule (71 FR

8489) was promulgated did not allow the amendment to the darkblotched rockfish OY to be permanent. The darkblotched rockfish OY was only effective for 180 days. This action corrects the August 22, 2006 (71 FR 48824) rule which extended the temporary rule section (i.e., the darkblotched rockfish OY) of the February 17, 2006 final rule (71 FR 8489), as legally permitted. In addition, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. Because this final rule does not constitute a substantive rule, it is not subject to the requirement for a 30-day delay in effective date under 5 U.S.C. 553(d).

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

Dated: September 28, 2006.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 06–8436 Filed 9–28–06; 2:27 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 092606B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2006 total allowable catch (TAC) of pollock for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 27, 2006, through 1200 hrs, A.l.t., October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The C season allowance of the 2006 TAC of pollock in Statistical Area 610 of the GOA is 10,249 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season allowance by 3,850 mt, the amount by which the A and B season allowance of the pollock TAC in Statistical Area 610 was exceeded. The revised C season allowance of the pollock TAC in Statistical Area 610 is therefore 6,399 mt (10,249 mt minus 3,850 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2006 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,389 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 25, 2006.

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

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

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

Dated: September 26, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–8401 Filed 9–27–06; 2:52 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 092606C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2006 total allowable catch (TAC) of pollock for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 27, 2006, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The C season allowance of the 2006 TAC of pollock in Statistical Area 630 of the GOA is 6,263 metric tons (mt) as established by the 2006 and 2007

harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the C season pollock allowance by 678 mt, the remaining amount of the A and B season allowance of the pollock TAC in Statistical Area 630. The revised C season allowance of the pollock TAC in Statistical Area 630 is therefore 6,941 mt (6,263 mt plus 678 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2006 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,911 mt, and is setting aside the remaining 30 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 25, 2006.

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

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

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

Dated: September 26, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–8400 Filed 9–27–06; 2:52 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 71, No. 190

Monday, October 2, 2006

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket Nos. RM06–16–000 and RM06–22–000]

Mandatory Reliability Standards for the Bulk Power System

Issued September 18, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice announcing rulemaking process.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is announcing a rulemaking process for mandatory Reliability Standards for the Bulk-Power System and specifically, its inclusion of certain Reliability Standards proposed by the North American Electric Reliability Council (NERC) in the Commission's upcoming Notice of Proposed Rulemaking which will be issued in Docket No. RM06–16–000. The Commission will also open a new proceeding in Docket No. RM06–22–000, which will process additional Reliability Standards proposed by NERC.

FOR FURTHER INFORMATION CONTACT: Jonathan First, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8529.

SUPPLEMENTARY INFORMATION: On August 28, 2006, the North American Electric Reliability Council, on behalf of its affiliate, the North American Electric Reliability Corporation (NERC Corporation, and collectively NERC), filed 27 proposed Reliability Standards for Commission approval. The Commission certified NERC Corporation as the Electric Reliability Organization (ERO) pursuant to section 215 of the Federal Power Act (FPA) in an order issued July 20, 2006 in Docket No. RR06–1–000.

NERC requested that these 27 proposed Reliability Standards be included in the upcoming Notice of Proposed Rulemaking (NOPR) in Docket No. RM06–16–000. Because of their close relationship with Reliability Standards already filed in that docket, the Commission will address 19 of the 27 proposed Reliability Standards in the upcoming NOPR in Docket No. RM06–16–000. The 19 Reliability Standards to be addressed in this docket are:

INT–001–1—Interchange Information
INT–003–1—Interchange Transaction Implementation
INT–004–1—Dynamic Interchange Transaction Modifications
INT–005–1—Interchange Authority Distributes Arranged Interchange
INT–006–1—Response to Interchange Authority
INT–007–1—Interchange Confirmation
INT–008–1—Interchange Authority Distributes Status
INT–009–1—Implementation of Interchange
INT–010–1—Interchange Coordination Exemptions
EOP–005–1—System Restoration Plans
MOD–013–1—Dynamics Data Requirements and Reporting Procedures
MOD–016–1—Actual and Forecast Demands, Net Energy for Load, Controllable DSM
PRC–002–1—Define Regional Disturbance Monitoring and Reporting Requirements
PRC–018–1—Disturbance Monitoring Equipment Installation and Data Reporting
VAR–001–1—Voltage and Reactive Control
VAR–002–1—Generator Operation for Maintaining Network Voltage Schedules
TOP–002–1—Normal Operations Planning
IRO–006–3—Reliability Coordination—Transmission Loading Relief
BAL–006–1—Inadvertent Interchange

The Commission is also opening a new Docket No. RM06–22–000 for processing the remaining 8 proposed Reliability Standards. No preliminary comments are being sought at this time. A proposed rulemaking will be issued later, and we will allow comments then. The 8 Reliability Standards included in this docket are:

CIP–002–1—Cyber Security—Critical Cyber Asset Identification
CIP–003–1—Cyber Security—Security Management Controls
CIP–004–1—Cyber Security—Personnel and Training
CIP–005–1—Cyber Security—Electronic Security Perimeter(s)
CIP–006–1—Cyber Security—Physical Security of Critical Cyber Assets
CIP–007–1—Cyber Security—Systems Security Management
CIP–008–1—Cyber Security—Incident Reporting and Response Planning
CIP–009–1—Cyber Security—Recovery Plans for Critical Cyber Assets

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.

Magalie R. Salas,
Secretary.

[FR Doc. E6–15797 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20, 25, 201, 202, 207, 225, 226, 500, 510, 511, 515, 516, 558, and 589

[Docket No. 2006N–0067]

RIN 0910–AF67

Index of Legally Marketed Unapproved New Animal Drugs for Minor Species; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 20, 2006, the comment period for the proposed rule that appeared in the **Federal Register** of August 22, 2006 (71 FR 48840). In the proposed rule, FDA requested comments on implementing regulations for the Federal Food, Drug, and Cosmetic Act (the act) entitled ''Index of Legally Marketed Unapproved New Animal Drugs for Minor Species.'' The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit written or electronic comments on the proposed rule by December 20, 2006. Submit comments

regarding information collection by December 20, 2006, to the Office of Management and Budget (OMB) (see **ADDRESSES**).

ADDRESSES: You may submit comments, identified by [Docket No. 2006N–0067 and RIN number 0910–AF67], by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Information Collection Provisions: Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).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.

FOR FURTHER INFORMATION CONTACT: Bernadette Dunham, Center for Veterinary Medicine (HFV–50), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9090, e-mail: *Bernadette.Dunham@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 22, 2006, FDA published a proposed rule with a 90-day comment period to request comments on implementing regulations for the indexing provisions of the Minor Use and Minor Species Animal Health Act of 2004. Comments on the proposed rule will inform FDA's rulemaking to establish regulations for the procedures and criteria for index listing a new animal drug for use in a minor species.

The agency has received requests for a 30-day extension of the comment period for the proposed rule. Each request conveyed concern that the current 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the proposed rule.

FDA has considered the requests and is extending the comment period for the proposed rule for 30 days, until December 20, 2006. The agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–16208 Filed 9–29–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–094]

RIN 1625–AA11

Regulated Navigation Area: Navigable Waters Within Narragansett Bay, RI and Mount Hope Bay, MA, Including the Providence River and Taunton River

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meetings, and re-opening of comment period.

SUMMARY: In response to public requests, the Coast Guard will hold two public meetings to receive comments on its Notice of Proposed Rulemaking (NPRM) to modify the existing Regulated Navigation Area (RNA) in the Providence River, Narragansett Bay, and Mount Hope Bay. Additionally, the Coast Guard is re-opening the period to receive comments on that NPRM. Holding two public meetings and re-opening the comment period will provide the public additional opportunities and more time to submit comments and recommendations.

DATES: A public meeting will be held in Fall River, MA, on October 16, 2006, beginning at 7 p.m., and in Warwick, RI, on October 19, 2006, beginning at 7 p.m. Comments and related material must reach the Coast Guard on or before November 1, 2006.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Sector Southeastern New England, Prevention Department, 20 Risho Avenue, East Providence, RI 02914–1208. U.S. Coast Guard Sector Southeastern New England maintains the public docket for this rulemaking. Comments and documents will become part of this docket and will be available for inspection and copying at the same address between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

The public meetings locations are:

- Bristol Community College, Margaret Jackson Arts Center Theater, 777 Elsbree Street, Fall River, Massachusetts; and
- Community College of Rhode Island, Knight Campus, Henderson Presentation Room #4080, 400 East Avenue, Warwick, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England, 401–435–2351.

SUPPLEMENTARY INFORMATION:

Request for Comments

On May 25, 2006, the Commander, First Coast Guard District, published a notice of proposed rulemaking (NPRM) in the **Federal Register** that proposed revisions to current navigation safety measures in Narragansett Bay, including the Providence River, and proposed new measures for vessels operating in Mount Hope Bay, particularly when transiting through the old and new Brightman Street bridges. (See the **Federal Register** Vol. 71, pages 30108–30112.) A total of six comments were received by the August 23, 2006 deadline.

Two of those comments requested public hearings, and we have determined that providing an opportunity for oral presentations at public meetings would assist the Coast Guard in this rulemaking. Therefore, we will sponsor public hearings at the times and places described in the *Public Meetings* paragraph below. Additionally, the Coast Guard is re-opening the comment period through November 1, 2006.

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–05–094), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. Comments received on or before November 1, 2006, will be considered timely.

Public Meetings

We intend to hold two public meetings to receive comments on our proposed rule published May 25, 2006, that would revise some provisions of the existing RNA in the Providence River, Narragansett Bay, and Mount Hope Bay. For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, please call Mr. Edward G. LeBlanc of Coast Guard Sector Southeastern New England at 401–435–2351.

The times, dates, and locations for these two meetings are:

- From 7 p.m. to 9 p.m., Monday, October 16, 2006, at Bristol Community College, Margaret Jackson Arts Center Theater, 777 Elsbree Street, Fall River, Massachusetts; and
- From 7 p.m. to 9 p.m., Thursday, October 19, 2006, at the Community College of Rhode Island, Knight Campus, Henderson Presentation Room #4080, 400 East Avenue, Warwick, Rhode Island.

We may adjourn these public meetings earlier if all comments have been received from those present.

Dated: September 18, 2006.

T.S. Sullivan,

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

[FR Doc. E6–16094 Filed 9–29–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2006–0682; FRL8226–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the West Virginia Portion of the Wheeling, WV–OH 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision for the West Virginia portion of the Wheeling, WV–OH interstate area (herein referred to as the ''Area'') from nonattainment to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The West Virginia Department of Environmental Protection (WVDEP) is requesting that the Marshall and Ohio County, West Virginia (Wheeling) portion of the area be redesignated as attainment for the 8-hour ozone NAAQS. The interstate 8-hour ozone nonattainment area is comprised of three counties (Marshall and Ohio Counties, West Virginia (Wheeling) and Belmont County, Ohio (Belmont)). EPA is proposing to approve the ozone redesignation request for the Wheeling portion of the area. In conjunction with its redesignation request, the WVDEP submitted a SIP revision consisting of a maintenance plan for Wheeling that provides for continued attainment of the 8-hour ozone NAAQS for the next 12 years. EPA is proposing to make a determination that Wheeling has attained the 8-hour ozone NAAQS based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2002–2004. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that Wheeling has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Wheeling maintenance plan for purposes of transportation conformity, and is also proposing to approve those MVEBs. EPA is proposing approval of the redesignation request and of the maintenance plan revision to the West Virginia SIP in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before November 1, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0682 by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: morris.makeba@epa.gov*

C. *Mail:* EPA–R03–OAR–2006–0682, Makeba Morris, Chief, Air Quality Planning Branch

D. Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2006–0682. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail

comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov.*

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

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I. What Actions Are EPA Proposing To Take?

On July 24, 2006, WVDEP formally submitted a request to redesignate Wheeling from nonattainment to attainment of the 8-hour NAAQS for ozone. On July 24, 2006, West Virginia submitted a maintenance plan for Wheeling as a SIP revision, to ensure continued attainment over the next 12 years. Wheeling is comprised of Marshall and Ohio Counties. Wheeling is currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that Wheeling has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of Wheeling from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for Wheeling, such approval being one of the CAA requirements for approval of a redesignation request. The maintenance plan is designed to ensure continued attainment throughout Wheeling for the next 12 years. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Wheeling maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for transportation conformity purposes. These MVEBs are state MVEBs for the West Virginia portion of the Area. In a separate redesignation request, the State of Ohio is establishing MVEBs and requesting redesignation to attainment for the remainder of the Area (i.e., Belmont County).

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated as nonattainment any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857). On June 15, 2005 (69 FR at 23996), the 1-hour ozone NAAQS was revoked in the Area (as well as most other areas of the country). See 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); and see 70 FR 44470 (August 3, 2005).

The CAA, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, the Area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and is subject to the requirements of subpart 1.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). See 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data indicates that the area has a design value of 0.078 ppm for the 3-year period of 2002–2004 and a design value of

design value of 0.076 ppm for the 3-year period of 2003–2005. Therefore, the ambient ozone data for the area indicates no violations of the 8-hour ozone standard. Final monitoring data for 2005 indicates continued attainment of the 8-hour ozone standard in the area.

B. The Wheeling, WV–OH Area

The Area consists of Marshall and Ohio Counties, West Virginia and Belmont County, Ohio. Prior to its designation as an 8-hour ozone nonattainment area, the Area was an attainment/unclassifiable area for the 1-hour ozone nonattainment NAAQS. See 56 FR 56694 (November 6, 1991).

On July 24, 2006, the WVDEP requested that Wheeling be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2002–2004, indicating that the 8-hour NAAQS for ozone had been achieved in the Area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The state containing such area has met all requirements applicable to the area under section 110 and Part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni Director, Air Quality Management Division, October 28, 1992;
- ''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;
- ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On July 24, 2006, the WVDEP requested redesignation of Wheeling to attainment for the 8-hour ozone standard. On July 24, 2006, the WVDEP submitted a maintenance plan for Wheeling as a SIP revision, to assure continued attainment over the next 12 years, until 2018. EPA has determined that Wheeling has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of Wheeling from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the West Virginia SIP a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in Wheeling for the next 12 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies MVEBs for NO_X and VOC for transportation conformity purposes for the years 2004, 2009 and 2018. These motor vehicle emissions (2004) and MVEBs (2009 and 2018) are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Year	NO_X	VOC
2004	4.7	2.8
2009	4.3	2.5
2018	1.7	1.4

VI. What Is EPA's Analysis of the State's Request?

EPA is proposing to determine that Wheeling has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how the WVDEP's July 24, 2006 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Wheeling, WV–OH Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour

ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor, within the area, over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the area there is one ozone monitor, located in Ohio County, West Virginia that measures air quality with respect to ozone.[1] As part of its redesignation request, West Virginia submitted ozone monitoring data for the years 2000–2005 for the area. This data has been quality assured and is recorded in AQS. The fourth high 8-hour daily maximum concentrations, along with the three-year averages, are summarized in Table 2.

TABLE 2.—WHEELING, WV–OH FOURTH HIGHEST 8-HOUR AVERAGE VALUES; OHIO COUNTY MONITOR, AQS ID 54–069–0007

Year	Annual 4th high reading (ppm)
2000	0.071
2001	0.088
2002	0.097
2003	0.076
2004	0.063
2005	0.089

The average for the 3-year period 2002 through 2004 is 0.078 ppm.
The average for the 3-year period 2003 through 2005 is 0.076 ppm.

The air quality data for 2002–2004 show that the entire area has attained the standard with a design value of 0.078 ppm. Also, the air quality data for 2003–2005 show that the entire area is still attaining the 8-hour standard with a design value of 0.076 ppm. The data collected at the Ohio County monitor satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The WVDEP's request for redesignation for Wheeling indicates that the data was quality assured in accordance with 40 CFR part 58. The WVDEP uses AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, WVDEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by West Virginia and data taken from AQS indicates that the area has attained the 8-hour ozone NAAQS.

B. Wheeling Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that Wheeling has met all SIP requirements applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to Wheeling, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that came due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the submittal of a complete redesignation request for an area remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25161). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's

[1] While this monitor has been relocated twice, it remains within five miles of its original location. Statistical analysis indicates that the ozone monitoring sites have maintained the integrity of the 8-hour NAAQS. (See Technical Support Document (TSD).)

designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. West Virginia and Ohio will still be subject to these requirements after the Area is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174–53176 (October 10, 1996), 62 FR 24816 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida, final rulemaking 60 FR 62748 (December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation 65 FR 37890 (June 19, 2000), and in the Pittsburgh redesignation 66 FR 53090 (October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request.

Because the West Virginia's SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that West Virginia has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Area Requirements Under the 8-Hour Standard

The Area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. As discussed previously, the Area was designated attainment/unclassifiable for the 1-hour standard, therefore, there are no outstanding Part D submittals under the 1-hour standard for the Area.

Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification. The Area was classified as a subpart 1 nonattainment area; therefore, no subpart 2 requirements apply to this area.

With respect to the 8-hour standard, EPA proposes to determine that West Virginia's SIP meets all applicable SIP requirements under Part D of the CAA, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of Wheeling's redesignation request. Because the State submitted a complete redesignation request for Wheeling prior to the deadline for any submissions required under the 8-hour standard, we have determined that the Part D requirements do not apply to Wheeling for the purposes of redesignation.

In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect, because PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' West Virginia has demonstrated that the area will be able to maintain the standard without Part D NSR in effect in Wheeling, and therefore, West Virginia need not have a fully approved Part D NSR program prior to approval of the redesignation request. West Virginia's SIP-approved PSD program will become effective in Wheeling upon redesignation to attainment. See rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

3. Wheeling Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the West Virginia SIP for the purposes of this redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25425 (May 12, 2003) and citations therein. The Area was a 1-hour attainment/unclassifiable area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004. Because the Area was never designated as a Part D nonattainment area, there were no previous Part D SIP submittal requirements for the Area. Nor

have any Part D submittal requirements have come due prior to the submittal of the 8-hour maintenance plan for the area. Therefore, all Part D submittal requirements have been fulfilled. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of Wheeling, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet become due for the Area, and therefore they need not be approved into the SIP prior to redesignation.

4. The Air Quality Improvement in the Wheeling, WV–OH Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the States have demonstrated that the observed air quality improvement in the Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. Emissions reductions attributable to these rules in the Area are shown in Table 3.

TABLE 3.—WHEELING (MARSHALL AND OHIO COUNTY, WEST VIRGINIA) TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 (TPD)*

Year	Point	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	3.0	14.8	2.3	3.4	23.5
Year 2004	3.0	15.4	2.3	2.8	23.5
Diff. (02–04)	0	+0.6	0	−0.6	0
Nitrogen Oxides (NO_X)					
Year 2002	152.2	3.4	5.6	5.5	166.7
Year 2004	85.8	3.4	7.3	4.7	101.2
Diff. (02–04)	−66.4	0	+1.7	−0.8	−65.5
Belmont (Belmont County, Ohio) Total VOC and NO_X Emissions for 2002 and 2004 (tpd)*					
Volatile Organic Compounds (VOC)					
Year 2002	0.2	4.1	1.0	4.4	9.7
Year 2004	0.2	4.0	0.9	3.7	8.8
Diff. (02–04)	0	−0.1	−0.1	−0.8	−0.9
Nitrogen Oxides (NO_X)					
Year 2002	31.8	0.3	3.0	7.4	42.5
Year 2004	28.7	0.3	2.9	6.3	38.2
Diff. (02–04)	−3.1	0	−0.1	−1.1	−4.3

* Emissions not exact, due to rounding.

Between 2002 and 2004, Wheeling VOC emissions stayed the same, and NO_X emissions were reduced by 65.5 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in Wheeling:

Programs Currently in Effect

(a) National Low Emission Vehicle (NLEV);

(b) Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and,

(c) Clean Diesel Program.

West Virginia has demonstrated that the implementation of permanent enforceable emissions controls have reduced local NO_X emissions. Also, between 2002 and 2004, Belmont VOC emissions were reduced by 0.9 tpd and NO_X emissions were reduced by 4.3 tpd. Therefore, the entire Area is seeing a decrease in VOC and NO_X emissions, due to permanent and enforceable measures.

Nearly all of the reductions in NO_X are attributable to the implementation of the NO_X SIP Call. West Virginia has indicated in its submittal that the implementation of the NO_X SIP Call, with its mandatory reductions in NO_X emissions from Electric Generating Units (EGUs) and large industrial boilers (non-EGUs), reduced NO_X emissions throughout the Area. NO_X emissions from EGUs in Marshall and Ohio Counties, West Virginia were reduced by 60.3 tpd between 2002 and 2004. NO_X emissions from EGU's in Belmont County, Ohio were reduced by 3.1 tpd between 2002 and 2004. Also, NO_X emissions from non-EGU sources in Marshall and Ohio Counties, West Virginia were reduced by 6.1 tpd between 2002 and 2004. The WVDEP believes that the improvement in ozone air quality from 2002 to 2004 was the result of identifiable, permanent and enforceable reductions in ozone precursor emissions for the same period.

Additionally, WVDEP has identified, but not quantified, additional reductions in VOC emissions that will be achieved as a co-benefit of the reductions in the emission of hazardous air pollutants (HAPs) as a result of implementation of EPA's Maximum Achievable Control Technology (MACT) standards.

Other regulations, such as the non-road diesel, 69 FR 38958 (June 29, 2004), the heavy duty engine and vehicle standards, 66 FR 5002 (January 18, 2001) and the new Tier 2 tailpipe standards for automobiles, 65 FR 6698 (January 10, 2000), are also expected to greatly reduce emissions throughout the country and thereby reduce emissions impacting the Ohio County monitor. The Tier 2 standards came into effect in 2004, and by 2030, EPA expects that the new Tier 2 standards will reduce NO_X emissions by about 74 percent nationally. EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the Area achieving attainment of the 8-hour ozone standard.

5. Wheeling Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate Wheeling to attainment status, West Virginia submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in Wheeling for at least 12 years after redesignation. West Virginia is requesting that EPA approve this SIP revision as meeting the requirement of CAA 175A. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for Wheeling meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) An attainment emissions inventory;

(b) A maintenance demonstration;

(c) A monitoring network;

(d) Verification of continued attainment; and

(e) A contingency plan.

Analysis of the Wheeling Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for Wheeling since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the CAA requirements to date.

The WVDEP prepared comprehensive VOC and NO_X emissions inventories for Wheeling, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002.

To develop the NO_X and VOC base year emissions inventories, WVDEP used the following approaches and sources of data:

(i) *Point source emissions*—West Virginia maintains its point source emissions inventory data on the i-STEPS database, which is commercial software. Facilities subject to emissions inventory reporting requirements were those operating point sources subject to Title V permitting requirements. Affected sources were identified from the WVDEP's Regulation 30 database, which is maintained by the WVDEP's Title V Permitting Group.

(ii) *Area source emissions*—In order to calculate the area source emissions inventory the WVDEP took the annual values from the VISTAS base year inventory and derived the typical ozone summer weekday, using procedures outlined in the EPA's Emissions Modeling Clearinghouse (EMCH) Memorandum, ''Temporal Allocation of Annual Emissions Using EMCH Temporal Profiles, April 29, 2002.'' This enabled WVDEP to arrive at the ''typical'' summer day emissions.

(iii) *On-road mobile source emissions*—VISTAS developed 2002 on-road mobile (highway) emissions inventory data based on vehicle miles traveled (VMT) updates provided by WVDEP. VISTAS also estimated future emissions based upon expected growth for the future years 2009 and 2018. However, federal Transportation Conformity requirements dictate that the WVDEP consult with the Metropolitan Planning Organization (MPO) responsible for transportation planning in developing SIP revisions which may establish MVEBs. This applies to the maintenance plan submitted by WVDEP on July 24, 2006. Therefore, the WVDEP has consulted with the Wheeling MPO, the Bel-O-Mar Regional Council (Bel-O-Mar), as well as the West Virginia Department of Transportation (WVDOT) and the Ohio Department of Transportation (ODOT), to develop state MVEBs for the West Virginia portion of the nonattainment area. The ODOT maintains the Travel Damand Model (TDM) for the Bel-O-Mar area and provided base year and projection emissions data consistent with their most recent available TDM results along with EPA's most recent emission factor model, MOBILE6.2. The WVDEP used these data to estimate highway emissions and, in consultation with Bel-O-Mar and ODOT to develop highway emissions budgets for VOC and NO_X.

Bel-O-Mar, WVDOT, and ODOT must evaluate future Long Range Transportation Plans (LRTP) and Transportation Improvement Programs (TIP) to ensure that the associated emissions are equal to or less then the final emissions budgets. The budgets are designed to facilitate a positive conformity determination while ensuring overall maintenance of the 8-hour NAAQS. It should be noted that the MVEBs and budgets only represent the Wheeling (Marshall and Ohio Counties) portion of the nonattainment area.

(iv) *Mobile non-road emissions*—Emissions for the 2002 inventory from nonroad sources were estimated in two steps. First, emissions for nonroad source categories that are included in the NONROAD model were developed. Second, emissions from sources not included in the NONROAD model were estimated.

The 2002 mobile non-road emissions inventory was developed by WVDEP staff using the NONROAD2005b Model. NONROAD estimates fuel consumption and emissions of total hydrocarbons, carbon monoxide, nitrogen oxides, sulfur dioxide, and particulate matter for all nonroad mobile source categories

except for aircraft, locomotives, and commercial marine vessels (CMV).

The 2004 attainment year VOC and NO_X emissions for the Area are summarized along with the 2009 and 2018 projected emissions for this area in table 4, which covers the demonstration of maintenance for this area. EPA has concluded that West Virginia has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for the Area.

(b) Maintenance Demonstration—On July 24, 2006, the WVDEP submitted a SIP revision to supplement its July 24, 2006 redesignation request. The submittal by WVDEP consists of the maintenance plan as required by section 175A of the CAA. The Wheeling plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout Wheeling through the year 2018. The Wheeling maintenance demonstration need not be based on modeling. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–32 (May 12, 2003).

Table 4 specifies the Area's VOC and NO_X emissions for 2004, 2009, and 2018. The WVDEP and Ohio EPA chose 2009 as an interim year in the 12-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the 12-year maintenance period.

TABLE 4.—WHEELING, WV–OH NONATTAINMENT AREA SUMMARY OF EMISSIONS

[All emissions in tpd for an ozone season day]

	Emissions in tpd								
	2004			2009			2018		
	WV [1]	OH [2]	Total	WV [1]	OH [2]	Total	WV [1]	OH [2]	Total
Point:									
NO_X	85.8	28.7	114.5	61.7	21.1	82.8	26.2	19.0	45.2
VOC	3.0	0.2	3.2	2.8	0.1	2.9	3.3	0.2	3.5
Area:									
NO_X	3.4	0.3	3.7	1.8	0.4	2.2	2.0	0.4	2.4
VOC	15.4	4.0	19.4	7.3	3.9	11.2	8.4	3.9	12.3
Nonroad: [3]									
NO_X	7.3	2.9	10.2	5.2	2.5	7.7	4.6	1.9	6.5
VOC	2.3	0.9	3.2	2.1	0.8	2.9	1.8	0.6	2.4
MVEBs: [4]									
NO_X	4.7	6.3	11.0	4.3	4.7	9.0	1.7	1.9	3.6
VOC	2.8	3.5	6.3	2.5	2.6	5.1	1.4	1.5	2.9
Total: [5]									
NO_X	101.2	38.2	139.4	72.9	28.7	101.6	34.5	23.2	57.7
VOC	23.5	8.6	32.2	14.7	7.4	22.1	14.9	6.2	21.1

[1] WV emissions are total emissions for Ohio and Marshall Counties in West Virginia.
[2] OH emissions are total emissions for Belmont County in Ohio, as provided by Ohio EPA (see Appendix E).
[3] Nonroad includes nonroad model results plus Commercial Marice Wessels, Railroad and Airports.
[4] MVEBs for 2004 are actual; budgets established for 2009 and 2018 include 15% reallocation from the safety margin.
[5] Sums may not total exactly due to rounding.

Additionally, the following mobile programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

- Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006); 66 FR 2001 (January 18, 2001); and
- Non-road emissions standards (2008) and off-road diesel fuel (2007/2010); 69 FR 39858 (June 29, 2004).

In addition to the permanent and enforceable measures, CAIR, promulgated May 12, 2005 (70 FR 25161) should have positive impacts on West Virginia and Ohio's air quality. CAIR, which will be implemented in the eastern portion of the country in two phases (2009 and 2015), should reduce long range transport of ozone precursors, which will have a beneficial effect on air quality in the Area.

Currently, West Virginia is in the process of adopting rules to address CAIR through state rules 45CSR39, 45CSR40, and 45CSR41, which require annual and ozone season NO_X reductions from EGUs and ozone season NO_X reductions from non-EGUs. These rules were submitted to EPA as a SIP revision by September 11, 2006 as required in the May 12, 2005 (70 FR 25161) **Federal Register** publication.

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that WVDEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the Area, located in Ohio County, West Virginia. West Virginia will continue to operate its current air quality monitor in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The State of West Virginia has the legal authority to implement and enforce specified measures necessary to attain and maintain the NAAQS. Additionally, Federal programs such as Tier 2/Low Sulfur Gasoline Rule, 2007 On-Road Diesel Engine Rule, and Federal Non-road Engine/Equipment Rules will continue to be implemented on a national level. These programs help provide the reductions necessary for the Area to maintain attainment.

In addition to maintaining the key elements of its regulatory program, West Virginia requires ambient and source emissions data to track attainment and maintenance. The WVDEP proposes to fully update its point, area, and mobile emission inventories at 3-year intervals as required by the Consolidated Emissions Reporting Rule (CERR) to assure that its growth projections relative to emissions in these areas are sufficiently accurate to assure ongoing attainment with the NAAQS. The WVDEP will review stationary source

VOC and NO_X emissions by review of annual emissions statements and by update of its emissions inventories. The area source inventory will be updated using the same techniques as the 2002 ozone inventory. However, some source categories may be updated using historic activity levels determined from Bureau of Economic Analysis (BEA) data or West Virginia University/ Regional Research Institute (WVU/RRI) population estimates. The mobile source inventory model will be updated by obtaining county-level VMT from the WVDOT for the subject year and calculating emissions using the latest approved MOBILE model. Alternatively, the motor vehicle emissions may be obtained in consultation with the MPO, Bel-O-Mar, using methodology similar to that used for transportation conformity purposes. The WVDEP shall also continue to operate the existing ozone monitoring station in the areas pursuant to 40 CFR part 58 throughout the maintenance period and submit quality-assured ozone data to EPA through the AQS system.

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the State would adopt and implement the measure(s).

The ability of Wheeling to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in Wheeling remaining at or below 2004 levels. The State's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The State's maintenance plan lays out two situations where the need to adopt and implement a contingency measure to further reduce emissions would be triggered. Those situations are as follows:

(i) *If the triennial inventories indicate significant emissions growth above the 2004 maintenance base-year inventory or if a monitored air quality exceedance pattern indicates that an ozone NAAQS violation may be imminent*—Then WVDEP will evaluate existing control measures to ascertain if additional regulatory revisions are necessary to maintain the ozone standard. The maintenance plan also states that an exceedance pattern would include, but is not limited to, the measurement of five exceedances or more occurring at the monitor during a calendar year.

(ii) *In the event that a violation of the 8-hour ozone standard occurs at the Ohio County, West Virginia monitor*—The maintenance plan states that in the event that a violation of the ozone standard occurs at the Ohio County, West Virginia ozone the State of West Virginia will select and adopt one or more of the following measures to assure continued attainment:

- Extend the applicability of 45CSR21 (VOC/RACT rule) to include source categories previously excluded (e.g., waste water treatment facilities);
- Revised new source permitting requirements requiring more stringent emissions control technology and/or emissions offsets;
- NO_X RACT requirements;
- Regulations to establish plant-wide emissions caps (potentially with emissions trading provisions);
- Establish a Public Awareness/ Ozone Action Day Program, a two pronged program focusing on increasing the public's understanding of air quality issues in the region and increasing support for actions to improve the air quality, resulting in reduced emissions on days when the ozone levels are likely to be high.
- Initiate one or more of the following voluntary local control measures:

(1) Bicycle and Pedestrian Measures—A series of measures designed to promote bicycling and walking including both promotional activities and enhancing the environment for these activities;

(2) Reduce Engine Idling—Voluntary programs to restrict heavy duty diesel engine idling times for both trucks and school buses;

(3) Voluntary Partnership with Ground Freight Industry—A voluntary program using incentives to encourage the ground freight industry to reduce emissions;

(4) Increase Compliance with Open Burning Restrictions—Increase public awareness of the existing open burning restrictions and work with communities to increase compliance; and

(5) School Bus Engine Retrofit Program—Have existing school bus engines retrofitted to lower emissions.

The following schedule for adoption, implementation and compliance applies to the contingency measures concerning the option of implementing regulatory requirements.

- Confirmation of the monitored violation within 45 days of occurrence;
- Measure to be selected within 3 months after verification of a monitored ozone standard violation;
- Develop rule within 6 months of selection of measure;
- File rule with state secretary (process takes up to 42 days);
- Applicable regulation to be fully implemented within 6 months after adoption.

The following schedule for adoption, implementation and compliance applies to the voluntary contingency measures.

- Confirmation of the monitored violation within 45 days of occurrence;
- Measure to be selected within 3 months after verification of a monitored ozone standard violation;
- Initiation of program development with local governments within Wheeling by the start of the following ozone season.

(f) An Additional Provision of the Maintenance Plan—The State's maintenance plan for Wheeling has an additional provision. That provision states that based on the 2002 inventory data and calculation methodology, it is expected that area and mobile source emissions will not exhibit substantial increases between consecutive periodic year inventories. Therefore, if significant unanticipated emissions growth occurs, it is expected that point sources would be the cause. 40 CFR part 51, the CERR (67 FR 39602) requires that states submit an annual inventory of criteria pollutants for large point sources with actual emissions greater than or equal to any of the emission thresholds to EPA. Any significant increases that occur can be identified from these reports without waiting for a periodic inventory. This gives West Virginia the capability to identify needed regulations by source, source category and pollutant and to begin the rule promulgation process, if necessary, in an expeditious manner.

The maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. EPA believes that the maintenance plan SIP revision submitted by West Virginia for Wheeling meets the requirements of section 175A of the Act.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Wheeling Maintenance Plan Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets (MVEBs)?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e. RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan the MVEBs are termed ''on-road mobile source emissions budgets.'' Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the national ambient air quality standards. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by State and Federal agencies in determining whether proposed transportation projects ''conform'' to the state implementation plan as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The MVEBs for Wheeling are listed in Table 1 of this document for the 2004, 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for 2009 and 2018 only). These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: Wheeling first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The State used 2004 as the year to determine attainment levels of emissions for Wheeling. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 23.6 tpd of VOC and 101.2 tpd of NO_X. The WVDEP projected emissions out to the year 2018 and projected a total of 14.9 tpd of VOC and 34.6 tpd of NO_X from all sources in Wheeling. The safety margin for 2018 would be the difference between these amounts, or 8.7 tpd of VOC and 66.6 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 5 shows the safety margins for the 2009 and 2018 years.

TABLE 5.—2009 AND 2018 SAFETY MARGINS FOR WHEELING

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2004 Attainment	23.6	101.2
2009 Interim	14.8	72.9
2009 Safety Margin	8.8	28.3
2004 Attainment	23.6	101.2
2018 Final	14.9	34.6
2018 Safety Margin	8.7	66.6

The WVDEP allocated 0.56 tpd NO_X and 0.33 tpd VOC to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the WVDEP allocated 0.22 tpd NO_X and 0.19 tpd VOC from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 6 shows the final 2009 and 2018 MVEBS for Wheeling.

TABLE 6.—2009 AND 2018 FINAL MVEBS FOR WHEELING

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2009 projected on-road mobile source projected emissions	2.21	3.74
2009 Safety Margin Allocated to MVEBs	0.33	0.56
2009 MVEBs*	2.54	4.30

TABLE 6.—2009 AND 2018 FINAL MVEBS FOR WHEELING—Continued

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2018 projected on-road mobile source projected emissions	1.24	1.47
2018 Safety Margin Allocated to MVEBs	0.19	0.22
2018 MVEBs*	1.43	1.69

*Highway budgets are shown at a precision of two decimal places for conformity purposes.

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for Wheeling are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Wheeling Maintenance Plan?

The MVEBs for the Wheeling maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Wheeling MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Wheeling MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

VIII. Proposed Actions

EPA is proposing to determine that the Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the Wheeling portion of the Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated West Virginia's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that Wheeling has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of Wheeling from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for Wheeling, submitted on July 24, 2006, as a revision to the West Virginia SIP. EPA is proposing to approve the maintenance plan for Wheeling because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by West Virginia for Wheeling in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR. 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure

to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule proposing to approve the redesignation of the Wheeling area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This rule proposing to approve the redesignation of Wheeling to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: September 21, 2006.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E6–16177 Filed 9–29–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2006–0692; FRL–8226–2]

Approval and Promulgation of Air Quality Implementation Plans; WV; Redesignation of the Weirton, WV Portion of the Steubenville-Weirton, OH–WV 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision for the Weirton, West Virginia portion of the Steubenville-Weirton, OH–WV interstate area (herein referred to as the ''Area'') from nonattainment to attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The West Virginia Department of Environmental Protection (WVDEP) is requesting that the Brooke and Hancock County, West Virginia (Weirton) portion of the area be redesignated as attainment for the 8-hour ozone NAAQS. The interstate 8-hour ozone nonattainment area is comprised of three counties (Brooke and Hancock Counties, West Virginia (Weirton) and Jefferson County, Ohio (Steubenville)). EPA is proposing to approve the ozone redesignation request for the Weirton portion of the area. In conjunction with its redesignation request, the WVDEP submitted a SIP revision consisting of a maintenance plan for Weirton that provides for continued attainment of the 8-hour ozone NAAQS for the next 12 years. EPA is proposing to make a determination that Weirton has attained the 8-hour ozone NAAQS based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2002–2004. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that Weirton has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). EPA is providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Weirton maintenance plan for purposes of transportation conformity, and is also proposing to approve those MVEBs. EPA is proposing approval of the redesignation request and of the maintenance plan revision to the West Virginia SIP in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before November 1, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0692 by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: morris.makeba@epa.gov.

C. *Mail:* EPA–R03–OAR–2006–0692, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2006–0692. 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.

Docket: All documents in the electronic 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov*.

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

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I. What Actions Are EPA Proposing To Take?

On August 3, 2006, WVDEP formally submitted a request to redesignate Weirton from nonattainment to attainment of the 8-hour NAAQS for ozone. On August 3, 2006, West Virginia submitted a maintenance plan for Weirton as a SIP revision, to ensure continued attainment over the next 12 years. Weirton is comprised of Brooke and Hancock Counties. Weirton is currently designated as a basic 8-hour ozone nonattainment area. EPA is proposing to determine that Weirton has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of Weirton from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for Weirton, such approval being one of the CAA requirements for approval of a redesignation request. The maintenance plan is designed to ensure continued attainment throughout Weirton for the next 12 years. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Weirton maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for transportation conformity purposes. These MVEBs are State MVEBs for the West Virginia portion of the Area. In a separate redesignation request, the State of Ohio is establishing MVEBs and requesting redesignation for the remainder of this area (*i.e.*, Jefferson County).

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated as nonattainment any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857). On June 15, 2005 (69 FR at 23996), the 1-hour ozone NAAQS was revoked in the Area (as well as most other areas of the country). *See* 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); and *see* 70 FR 44470 (August 3, 2005).

The CAA, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004, the Area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and is subject to the requirements of subpart 1.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). *See* 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data indicates that Weirton has a design value of 0.083 ppm for the 3-year period of 2002–2004 and a design value of design value of 0.075 ppm for the 3-year period of 2003–2005. The ozone monitoring data also indicates that Steubenville has a design value of 0.081 ppm for the 3-year period of 2002–2004 and a design value of 0.077 ppm for the 3-year period of 2003–2005. Therefore, the ambient ozone data for the area indicates no violations of the 8-hour ozone standard. Monitoring data for 2005 indicates continued attainment of the 8-hour ozone standard in the area.

B. The Steubenville-Weirton, OH–WV Area

The Area consists of Brooke and Hancock Counties, West Virginia and Jefferson County, Ohio. Prior to its designation as an 8-hour ozone nonattainment area, the Area was an attainment/unclassifiable area for the 1-hour ozone nonattainment NAAQS. *See* 56 FR 56694 (November 6, 1991).

On August 3, 2006, the WVDEP requested that Weirton be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2002–2004, indicating that the 8-hour NAAQS for ozone had been achieved in the Area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations'', Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
- ''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;
- ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On August 3, 2006, the WVDEP requested redesignation of Weirton to attainment for the 8-hour ozone standard. On August 3, 2006, the WVDEP submitted a maintenance plan for Weirton as a SIP revision, to assure continued attainment over the next 12 years, until 2018. EPA has determined that Weirton has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of Weirton from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the West Virginia SIP a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in Weirton for the next 12 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO_X and VOC for transportation conformity purposes for the years 2004 (attainment year mobile emissions), 2009 and 2018. These MVEBs are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)

Year	NO_X	VOC
2004	3.6	2.6
2009	2.8	2.0
2018	1.2	1.0

VI. What Is EPA's Analysis of the State's Request?

EPA is proposing to determine that Weirton has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how the WVDEP's August 3, 2006 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Steubenville-Weirton, OH–WV Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor, within the area, over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084

ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In the Area there are two ozone monitors, one located in Hancock County, West Virginia and one in Jefferson County, Ohio, that measure air quality with respect to ozone. As part of its redesignation request, West Virginia submitted ozone monitoring data for the years 2002–2005 for the area. This data has been quality assured and is recorded in AQS. The fourth high 8-hour daily maximum concentrations, along with the three-year averages, are summarized in Table 2.

TABLE 2.—WEIRTON, WV NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES; HANCOCK MONITOR, AQS ID 54–029–1004

Year	Annual 4th high reading (ppm)
2002	0.100
2003	0.077
2004	0.073
2005	0.075

The average for the 3-year period 2002 through 2004 is 0.083 ppm.
The average for the 3-year period of 2003 through 2005 is 0.075 ppm.

Steubenville, OH Nonattainment Area Fourth Highest 8-Hour Average Values; Jefferson Monitor, AQS ID 39–081–0016

2002	0.093
2003	0.079
2004	0.071
2005	0.083

The average for the 3-year period 2002 through 2004 is 0.081 ppm.
The average for the 3-year period of 2003 through 2005 is 0.077 ppm.

The air quality data for 2002–2004 show that the entire area has attained the standard with a design value of 0.083 ppm in Weirton and a design value of 0.081 ppm in Steubenville. Also, the air quality data for 2003–2005 show that the entire area is still attaining the 8-hour standard with a design value of 0.075 ppm in Weirton and a design value of 0.077 ppm in Steubenville. The data collected at the Hancock County and Jefferson County monitors satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The WVDEP's request for redesignation for Weirton indicates that the data was quality assured in accordance with 40 CFR part 58. The WVDEP uses AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. In addition, as discussed below with respect to the maintenance plan, WVDEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by West Virginia and data taken from AQS indicates that the area has attained the 8-hour ozone NAAQS.

B. Weirton Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that Weirton has met all SIP requirements applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to Weirton, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that came due prior to the submittal of a complete redesignation request. *See also* Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the submittal of a complete redesignation request for an area remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25161). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to

a State regardless of the designation of any one particular area in the State.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. West Virginia and Ohio will still be subject to these requirements after the Area is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (*i.e.*, for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174–53176 (October 10, 1996), 62 FR 24816 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida, final rulemaking 60 FR 62748 (December 7, 1995). *See also* the discussion on this issue in the Cincinnati redesignation 65 FR 37890 (June 19, 2000), and in the Pittsburgh redesignation 66 FR 53090 (October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request.

Because the West Virginia's SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that West Virginia has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Area Requirements Under the 8-Hour Standard

The Area was designated a basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. As discussed previously, the Area was designated attainment/unclassifiable for the 1-hour standard, therefore, there are no outstanding Part D submittals under the 1-hour standard for the Area.

Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification. The Area was classified as a subpart 1 nonattainment area; therefore, no subpart 2 requirements apply to this area.

With respect to the 8-hour standard, EPA proposes to determine that West Virginia's SIP meets all applicable SIP requirements under Part D of the CAA, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of Weirton's redesignation request. Because the State submitted a complete redesignation request for Weirton prior to the deadline for any submissions required under the 8-hour standard, we have determined that the Part D requirements do not apply to Weirton for the purposes of redesignation.

In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires States to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. *See Wall* v. *EPA*, 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. *See also* 60 FR 62748 (December 7, 1995).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect, because PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' West Virginia has demonstrated that the area will be able to maintain the standard without Part D NSR in effect in Weirton, and therefore, West Virginia need not have a fully approved Part D NSR program prior to approval of the redesignation request. West Virginia's SIP-approved PSD program will become effective in Weirton upon redesignation to attainment. *See* rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

3. Weirton Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the West Virginia SIP for the purposes of this redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25425 (May 12, 2003) and citations therein. The Area was a 1-hour attainment/unclassifiable area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004. Because the Area was never designated as a Part D nonattainment area, there were no previous Part D SIP submittal requirements for this Area. Nor for any Part D submittal requirements have come due prior to the

submittal of the 8-hour maintenance plan for the Area. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of Weirton, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation have yet become due for the Area, and therefore they need not be approved into the SIP prior to redesignation.

4. The Air Quality Improvement in the Steubenville-Weirton, OH–WV Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting from Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the States have demonstrated that the observed air quality improvement in the Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules in the Area are shown in Table 3.

TABLE 3.—WEIRTON TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004 (TPD)*

Year	Point	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	6.7	4.5	1.5	3.2	15.9
Year 2004	4.8	4.6	1.5	2.6	13.5
Diff. (02–04)	−1.9	+0.1	0	−0.6	−2.4
Nitrogen Oxides (NO_X)					
Year 2002	5.9	4.6	4.3	4.3	19.1
Year 2004	4.5	4.8	5.3	3.6	18.2
Diff. (02–04)	−1.4	+0.2	+1.0	−0.7	−0.9
Steubenville Total VOC and NO_X Emissions for 2002 and 2004 (tpd) **Volatile Organic Compounds (VOC)**					
Year 2002	1.1	3.1	1.0	4.2	9.4
Year 2004	1.2	3.1	0.9	3.6	8.8
Diff. (02–04)	+0.1	0	−0.1	−0.6	−0.6
Nitrogen Oxides (NO_X)					
Year 2002	190.0	0.2	2.4	6.3	198.9
Year 2004	154.7	0.2	2.3	5.4	162.6
Diff. (02–04)	−35.3	0	−0.1	−0.9	−36.3

* Numbers are not exact, due to rounding.

Between 2002 and 2004, VOC emissions were reduced by 2.4 tpd, and NO_X emissions were reduced by 0.9 tpd, due to the following permanent and enforceable measures implemented or in the process of being implemented in Weirton:

Programs Currently in Effect

(a) National Low Emission Vehicle (NLEV);

(b) Motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards; and,

(c) Clean Diesel Program.

West Virginia has demonstrated that the implementation of permanent enforceable emissions controls have reduced local NO_X emissions. The 0.6 tpd reductions in mobile VOCs are attributable to mobile source emission controls such as federally mandated Tier 2 Vehicle and Gasoline Sulfur Program and the Clean Diesel Program.

Between 2002 and 2004, Steubenville shows a decrease in overall VOC emissions of 0.6 tpd and an overall decrease in emissions of NO_X of 36.3 tpd. This indicates that the Area has had an overall reduction in VOC and NO_X emissions.

Nearly all of the reductions in NO_X are attributable to the implementation of the NO_X SIP Call. West Virginia has indicated in its submittal that the implementation of the NO_X SIP Call, with its mandatory reductions in NO_X emissions from Electric Generating Units (EGUs) and large industrial boilers (non-EGUs), reduced NO_X emissions throughout the Area. While there are no EGU sources in Brooke or Hancock Counties (Weirton) there are EGUs and non-EGUs located in adjacent counties such as Jefferson County (Steubenville) and Ohio County, West Virginia. Between 2002 and 2004, Steubenville had a 35.3 tpd reduction in NO_X emissions from EGU sources. Therefore, the NO_X SIP call has had an impact on the air quality in the entire Area. NO_X emissions from non-EGU sources in Weirton were reduced by 1.4 tpd between 2002 and 2004. The WVDEP believes that the improvement in ozone air quality from 2002 to 2004 was the result of identifiable, permanent and enforceable reductions in ozone precursor emissions for the same period.

Additionally, WVDEP has identified, but not quantified, additional reductions in VOC emissions that will

be achieved as a co-benefit of the reductions in the emission of hazardous air pollutants (HAPs) as a result of implementation of EPA's Maximum Achievable Control Technology (MACT) standards.

Other regulations, such as the non-road diesel, 69 FR 38958 (June 29, 2004), the heavy duty engine and vehicle standards, 66 FR 5002 (January 18, 2001) and the new Tier 2 tailpipe standards for automobiles, 65 FR 6698 (January 10, 2000), are also expected to greatly reduce emissions throughout the country and thereby reduce emissions impacting the Steubenville-Weirton, OH–WV monitors. The Tier 2 standards came into effect in 2004, and by 2030, EPA expects that the new Tier 2 standards will reduce NO_X emissions by about 74 percent nationally. EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the Area achieving attainment of the 8-hour ozone standard.

5. Weirton Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate Weirton to attainment status, West Virginia submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in Weirton for at least 12 years after redesignation. West Virginia is requesting that EPA approve this SIP revision as meeting the requirement of CAA 175A. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for Weirton meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) An attainment emissions inventory;

(b) A maintenance demonstration;

(c) A monitoring network;

(d) Verification of continued attainment; and

(e) A contingency plan.

Analysis of the Weirton Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for Weirton since it is a reasonable year within the 3-year block of 2002–2004 and accounts for reductions attributable to implementation of the CAA requirements to date.

The WVDEP prepared comprehensive VOC and NO_X emissions inventories for Weirton, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002. To develop the NO_X and VOC base year emissions inventories, WVDEP used the following approaches and sources of data:

(i) *Point source emissions*—West Virginia maintains its point source emissions inventory data on the i-STEPS database, which is commercial software. Facilities subject to emissions inventory reporting requirements were those operating point sources subject to Title V permitting requirements. Affected sources were identified from the WVDEP's Regulation 30 database, which is maintained by the WVDEP's Title V Permitting Group.

(ii) *Area source emissions*—In order to calculate the area source emissions inventory the WVDEP took the annual values from the VISTAS base year inventory and derived the typical ozone summer weekday, using procedures outlined in the EPA's Emissions Modeling Clearinghouse (EMCH) Memorandum, ''Temporal Allocation of Annual Emissions Using EMCH Temporal Profiles, April 29, 2002.'' This enabled WVDEP to arrive at the ''typical'' summer day emissions.

(iii) *On-road mobile source emissions*—VISTAS developed 2002 on-road mobile (highway) emissions inventory data based on vehicle miles traveled (VMT) updates provided by WVDEP. VISTAS also estimated future emissions based upon expected growth for the future years 2009 and 2018. However, Federal Transportation Conformity requirements dictate that the WVDEP consult with the Metropolitan Planning Organization (MPO) responsible for transportation planning in developing SIP revisions which may establish MVEBs. This applies to the maintenance plan submitted by WVDEP on August 3, 2006. Therefore, the WVDEP has consulted with the Weirton MPO, Brooke-Hancock-Jefferson Metropolitan Planning Commission (BHJ), as well as the West Virginia Department of Transportation (WVDOT) and the Ohio Department of Transportation (ODOT), to develop State MVEBs for the West Virginia portion of the nonattainment area. The Travel Demand Model (TDM) is maintained by ODOT for BHJ in cooperation with WVDOT.

The ODOT provides base year and projection emissions data consistent with their most recent available TDM results along with EPA's most recent emission factor model, MOBILE6.2. Those estimates included NO_X and VOC emissions for the following years, 2002, 2004, 2009, and 2018. The WVDEP also consulted with BHJ, WVDOT and ODOT to develop State MVEBs for VOC and NO_X.

The BHJ must evaluate future Long Range Transportation Plans (LRTP) and Transportation Improvement Programs (TIP) to ensure that the associated emissions are equal to or less then the final emissions budgets. The budgets are designed to facilitate a positive conformity determination while ensuring overall maintenance of the 8-hour NAAQS. It should be noted that the MVEBs and budgets only represent the Weirton (Brooke and Hancock Counties) portion of the nonattainment area.

(iv) *Mobile non-road emissions*—Emissions for the 2002 inventory from nonroad sources were estimated in two steps. First, emissions for nonroad source categories that are included in the NONROAD model were developed. Second, emissions from sources not included in the NONROAD model were estimated.

The 2002 mobile non-road emissions inventory was developed by WVDEP staff using the NONROAD2005b Model. NONROAD estimates fuel consumption and emissions of total hydrocarbons, carbon monoxide, nitrogen oxides, sulfur dioxide, and particulate matter for all nonroad mobile source categories except for aircraft, locomotives, and commercial marine vessels (CMV).

The 2004 attainment year VOC and NO_X emissions for the Area are summarized along with the 2009 and 2018 projected emissions for this area in table 4, which covers the demonstration of maintenance for this area. EPA has concluded that West Virginia has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for this area.

(b) Maintenance Demonstration—On August 3, 2006, the WVDEP submitted a SIP revision to supplement its August 3, 2006 redesignation request. The submittal by WVDEP consists of the maintenance plan as required by section 175A of the CAA. The Weirton plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout Weirton through the year 2018. The Weirton maintenance demonstration need not be based on modeling. *See Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001); *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–32 (May 12, 2003).

Table 4 specifies the Steubenville-Weirton, OH–WV VOC and NO_X emissions for 2004, 2009, and 2018. The WVDEP and Ohio EPA chose 2009 as an interim year in the 12-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the 12-year maintenance period.

TABLE 4.—STEUBENVILLE-WEIRTON, WV–OH NONATTAINMENT AREA SUMMARY OF EMISSIONS

[All emissions in tpd for an ozone season day]

	Emissions in tpd								
	2004			2009			2018		
	WV [1]	OH [2]	Total	WV [1]	OH [2]	Total	WV [1]	OH [2]	Total
Point:									
NO_X	4.5	154.7	159.2	5.1	66.4	71.5	5.6	41.0	46.6
VOC	4.8	1.1	5.9	4.3	1.2	5.5	5.3	1.2	6.5
Area:									
NO_X	4.8	0.2	5.0	4.9	0.2	5.1	5.2	0.2	5.4
VOC	4.6	3.1	7.6	4.5	2.9	7.4	5.2	2.9	8.1
Nonroad [3]:									
NO_X	5.3	2.3	7.6	3.8	1.9	5.7	3.2	1.6	4.8
VOC	1.5	0.9	2.4	1.2	0.9	2.1	1.0	0.6	1.6
MVEBs [4]:									
NO_X	3.6	5.4	9.0	2.8	4.1	6.9	1.2	1.7	2.9
VOC	2.6	3.5	6.2	2.0	2.6	4.6	1.0	1.4	2.4
Total [5]:									
NO_X	18.2	162.6	180.7	16.6	72.6	89.2	15.2	49.9	65.1
VOC	13.5	8.7	22.2	12.0	7.6	19.6	12.5	6.1	18.6

[1] WV emissions are total emissions for Brooke and Hancock Counties in West Virginia.
[2] OH emissions are total emissions for Jefferson County in Ohio, as provided by Ohio EPA (see Appendix E of the State submittal).
[3] Nonroad includes nonroad model results plus Commercial Marine Vessels, Railroad and Airports.
[4] MVEBs for 2004 are actual; budgets established for 2009 and 2018 include 15% reallocation from the safety margin.
[5] Sums may not total exactly due to rounding.

Additionally, the following mobile programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

- Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006); 66 FR 2001 (January 18, 2001); and
- Non-road emissions standards (2008) and off-road diesel fuel (2007/2010); 69 FR 39858 (June 29, 2004).

In addition to the permanent and enforceable measures, CAIR, promulgated May 12, 2005 (70 FR 25161) should have positive impacts on West Virginia and Ohio's air quality. CAIR, which will be implemented in the eastern portion of the country in two phases (2009 and 2015), should reduce long range transport of ozone precursors, which will have a beneficial effect on air quality in the Area.

Currently, West Virginia is in the process of adopting rules to address CAIR through State rules 45CSR39, 45CSR40, and 45CSR41, which require annual and ozone season NO_X reductions from EGUs and ozone season NO_X reductions from non-EGUs. These rules were submitted to EPA as a SIP revision by September 11, 2006 as required in the May 12, 2005 (70 FR 25161) **Federal Register** publication.

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that WVDEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Area.

(c) Monitoring Network—There are currently two monitors measuring ozone in the Area, one in Hancock County, West Virginia and one in Jefferson County, Ohio. West Virginia will continue to operate its current air quality monitor (located in Hancock County) in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The State of West Virginia has the legal authority to implement and enforce specified measures necessary to attain and maintain the NAAQS. Additionally, Federal programs such as Tier 2/Low Sulfur Gasoline Rule, 2007 On-Road Diesel Engine Rule, and Federal Non-road Engine/Equipment Rules will continue to be implemented on a national level. These programs help provide the reductions necessary for the Area to maintain attainment.

In addition to maintaining the key elements of its regulatory program, West Virginia requires ambient and source emissions data to track attainment and maintenance. The WVDEP proposes to fully update its point, area, and mobile emission inventories at 3-year intervals as required by the Consolidated Emissions Reporting Rule (CERR) to assure that its growth projections relative to emissions in these areas are sufficiently accurate to assure ongoing attainment with the NAAQS. The WVDEP will review stationary source

VOC and NO_X emissions by review of annual emissions statements and by update of its emissions inventories. The area source inventory will be updated using the same techniques as the 2002 ozone inventory. However, some source categories may be updated using historic activity levels determined from Bureau of Economic Analysis (BEA) data or West Virginia University/ Regional Research Institute (WVU/RRI) population estimates. The mobile source inventory model will be updated by obtaining county-level VMT from the WVDOT for the subject year and calculating emissions using the latest approved MOBILE model. Alternatively, the motor vehicle emissions may be obtained in consultation with the MPO, BHJ, using methodology similar to that used for transportation conformity purposes. The WVDEP shall also continue to operate the existing ozone monitoring station in the areas pursuant to 40 CFR part 58 throughout the maintenance period and submit quality-assured ozone data to EPA through the AQS system.

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the State would adopt and implement the measure(s).

The ability of Weirton to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in Weirton remaining at or below 2004 levels. The State's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The State's maintenance plan lays out two situations where the need to adopt and implement a contingency measure to further reduce emissions would be triggered. Those situations are as follows:

(i) *If the triennial inventories indicate significant emissions growth above the 2004 maintenance base-year inventory or if a monitored air quality exceedance pattern indicates that an ozone NAAQS violation may be imminent*—Then WVDEP will evaluate existing control measures to ascertain if additional regulatory revisions are necessary to maintain the ozone standard. The maintenance plan also states that an exceedance pattern would include, but is not limited to, the measurement of five exceendances or more occurring at the same monitor during a calendar year.

(ii) *In the event that a violation of the 8-hour ozone standard occurs at the Hancock County, West Virginia or the Jefferson County, Ohio monitor*—The maintenance plan states that in the event that a violation of the ozone standard occurs at either the Hancock County, West Virginia or the Jefferson County, Ohio ozone monitor, the State of West Virginia will select and adopt one or more of the following measures to assure continued attainment:

- Extend the applicability of 45CSR21 (VOC/RACT rule) to include source categories previously excluded (*e.g.*, waste water treatment facilities);
- Revised new source permitting requirements requiring more stringent emissions control technology and/or emissions offsets;
- NO_X RACT requirements;
- Regulations to establish plant-wide emissions caps (potentially with emissions trading provisions);
- Establish a Public Awareness/ Ozone Action Day Program, a two pronged program focusing on increasing the public's understanding of air quality issues in the region and increasing support for actions to improve the air quality, resulting in reduced emissions on days when the ozone levels are likely to be high.
- Initiate one or more of the following voluntary local control measures:

(1) Bicycle and Pedestrian Measures—A series of measures designed to promote bicycling and walking including both promotional activities and enhancing the environment for these activities;

(2) Reduce Engine Idling—Voluntary programs to restrict heavy duty diesel engine idling times for both trucks and school buses;

(3) Voluntary Partnership with Ground Freight Industry—A voluntary program using incentives to encourage the ground freight industry to reduce emissions;

(4) Increase Compliance with Open Burning Restrictions—Increase public awareness of the existing open burning restrictions and work with communities to increase compliance; and

(5) School Bus Engine Retrofit Program—Have existing school bus engines retrofitted to lower emissions.

The following schedule for adoption, implementation and compliance applies to the contingency measures concerning the option of implementing regulatory requirements.

- Confirmation of the monitored violation within 45 days of occurrence;
- Measure to be selected within 3 months after verification of a monitored ozone standard violation;
- Develop rule within 6 months of selection of measure;
- File rule with State secretary (process takes up to 42 days);
- Applicable regulation to be fully implemented with in 6 months after adoption.

The following schedule for adoption, implementation and compliance applies to the voluntary contingency measures.

- Confirmation of the monitored violation within 45 days of occurrence;
- Measure to be selected within 3 months after verification of a monitored ozone standard violation;
- Initiation of program development with local governments within Weirton by the start of the following ozone season.

(f) An Additional Provision of the Maintenance Plan—The State's maintenance plan for Weirton has an additional provision. That provision states that based on the 2002 inventory data and calculation methodology, it is expected that area and mobile source emissions will not exhibit substantial increases between consecutive periodic year inventories. Therefore, if significant unanticipated emissions growth occurs, it is expected that point sources would be the cause. 40 CFR part 51, the CERR (67 FR 39602) requires that States submit an annual inventory of criteria pollutants for large point sources with actual emissions greater than or equal to any of the emissions thresholds to EPA. Any significant increases that occur can be identified from these reports without waiting for a periodic inventory. This gives West Virginia the capability to identify needed regulations by source, source category and pollutant and to begin the rule promulgation process, if necessary, in an expeditious manner.

The maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. EPA believes that the maintenance plan SIP revision submitted by West Virginia for Weirton meets the requirements of section 175A of the Act.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Weirton Maintenance Plan Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets (MVEBs)?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*i.e.*, RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan the MVEBs are termed ''on-road mobile source emissions budgets.'' Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the national ambient air quality standards. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by State and Federal agencies in determining whether proposed transportation projects ''conform'' to the State implementation plan as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The MVEBs for Weirton are listed in Table 1 of this document for the 2004, 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for 2009 and 2018 only). These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which Weirton met the NAAQS. The following example is for the 2018 safety margin: Weirton first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The State used 2004 as the year to determine attainment levels of emissions for Weirton. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 13.5 tpd of VOC and 18.2 tpd of NO_X. The WVDEP projected emissions out to the year 2018 and projected a total of 12.4 tpd of VOC and 15.2 tpd of NO_X from all sources in Weirton. The safety margin for Weirton for 2018 would be the difference between these amounts, or 1.1 tpd of VOC and 3.0 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 5 shows the safety margins for the 2009 and 2018 years.

TABLE 5.—2009 AND 2018 SAFETY MARGINS FOR WEIRTON

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2004 Attainment	13.5	18.2
2009 Interim	11.9	16.6
2009 Safety Margin	1.6	1.6
2004 Attainment	13.5	18.2
2018 Final	12.4	15.2
2018 Safety Margin	1.1	3.0

The WVDEP allocated 0.37 tpd NO_X and 0.26 tpd VOC to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_X projected on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the WVDEP allocated 0.15 tpd NO_X and 0.13 tpd VOC from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 6 shows the final 2009 and 2018 MVEBS for Weirton.

TABLE 6.—2009 AND 2018 FINAL MVEBS FOR WEIRTON, WEST VIRGINIA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2009 projected on-road mobile source projected emissions	1.70	2.45
2009 Safety Margin Allocated to MVEBs	0.26	0.37
2009 MVEBs*	1.96	2.82

TABLE 6.—2009 AND 2018 FINAL MVEBS FOR WEIRTON, WEST VIRGINIA—Continued

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2018 projected on-road mobile source projected emissions	0.87	1.02
2018 Safety Margin Allocated to MVEBs	0.13	0.15
2018 MVEBs *	1.00	1.17

* Highway budgets are shown at a precision of two decimal places for conformity purposes.

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for Weirton are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Weirton Maintenance Plan?

The MVEBs for the Weirton maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Weirton MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Weirton MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

VIII. Proposed Actions

EPA is proposing to determine that the Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the Weirton portion of the Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated West Virginia's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that Weirton has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of Weirton from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for Weirton, submitted on August 3, 2006, as a revision to the West Virginia SIP. EPA is proposing to approve the maintenance plan for Weirton because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by West Virginia for Weirton in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allow the State to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for

EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule proposing to approve the redesignation of the Weirton area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This rule proposing to approve the redesignation of Weirton to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: September 21, 2006.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E6–16176 Filed 9–29–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 71, No. 190

Monday, October 2, 2006

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.

TRADE AND DEVELOPMENT AGENCY

No FEAR Act Notice

AGENCY: U.S. Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the U.S. Trade and Development Agency's notification of employee rights and protections under Federal Antidiscrimination Laws and Whistleblower Protection Laws (No FEAR Act).

ADDRESSES: U.S. Trade and Development Agency, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Carolyn Hum, Administrative Officer, (703) 875–4357.

SUPPLEMENTARY INFORMATION: 5 CFR part 724, implementing the notice provisions of the Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), requires that each agency provide public notification of its initial No FEAR Act Notice to employees. This notice provides employees, former employees and applicants notification of their rights and applicable remedies available to them under the Antidiscrimination Laws and Whistleblower Protection Laws.

No FEAR Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with this agency. See, e.g. 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate

the procedural rights of a Federal employee who has been accused of discrimination

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (*e.g.*, EEO office, human resources office or legal office). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: September 27, 2006.

Carolyn Hum,

Administrative Officer.

[FR Doc. E6–16186 Filed 9–29–06; 8:45 am]

BILLING CODE 8040–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 26, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the 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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Swine 2006 Large and Small Enterprises.

OMB Control Number: 0579–NEW.

Summary of Collection: 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service (APHIS), Veterinary Services, the Bureau of Animal Industry, mandates collection and dissemination of animal health data and information. APHIS operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases and associated risk factors. NAHMS will initiate the fourth national data collection of swine through the Swine 2006 Study. The Swine 2006 Study is a part of an ongoing series of NAHMS studies on the U.S. Swine population. The swine study will consist of two components: A large-enterprise survey and a small-enterprise survey.

Need and Use of the Information: APHIS will use the information collected from both surveys to prepare descriptive reports and information sheets that will be disseminated to animal health officials, swine producers, stakeholders, and academia. Without this type of national data, the U.S. ability to detect trends in management, production, and health status that increases/decreases farm economy either directly or indirectly would be reduced to nonexistent.

Description of Respondents: Farms.

Number of Respondents: 6,503.

Frequency of Responses: Reporting: Other (once pre questionnaire).

Total Burden Hours: 11,769.

Animal and Plant Health Inspection Service

Title: Animal Welfare Act, Part 3.

OMB Control Number: 0579–0093.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) (Pub. L. 89–544) enacted August 24, 1966, and amended December 24, 1970 (Pub. L. 91–579); April 22, 1976 (Pub. L. 94–279); and December 23, 1985 (Pub. L. 99–198) required the U.S. Department of Agriculture (USDA) to regulate the humane care and handling of most warm-blooded animals, including marine mammals, used for research or exhibition purposes, sold as pets, or transported in commerce. The legislation and its amendments were the result of extensive demand by organized animal welfare groups and private citizens requesting a Federal law to protect such animals. The Animal and Plant Health Inspection Service (APHIS), Animal Care (AC) has the responsibility to enforce the AWA and the provisions of 9 CFR, Chapter 1, Subchapter A, which implements the AWA.

Need and Use of the Information: APHIS will collect information to insure that animals used in research facilities or for exhibition purposes are provided humane care and treatment. The information is used to ensure those dealers, exhibitors, research facilities, carriers, etc., are in compliance with the Animal Welfare Act and regulations and standards promulgated under this authority of the Act.

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

Number of Respondents: 10,217.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 47,591.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–16192 Filed 9–29–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. TM–06–11]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as

amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are Tuesday, October 17, 2006, 9 a.m. to 5 p.m.; Wednesday, October 18, 2006, 8 a.m. to 5 pm; and Thursday, October 19, 2006, 8 a.m. to 12:30 p.m. Requests from individuals and organizations wishing to make an oral presentation at the meeting or to submit written comments to be posted on the website prior to the NOSB meeting, are due by the close of business on October 6, 2006.

ADDRESSES: The meeting will take place at The Radisson Hotel—Reagan National Airport, 2020 Jefferson Davis Highway, Arlington, VA 22202. Requests for copies of the NOSB meeting agenda, to make an oral presentation at the meeting, or to submit written comments may be sent to Ms. Valerie Frances, Executive Director, NOSB, USDA–AMS–TMD–NOP, 1400 Independence Avenue, SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250–0268. These requests or comments may also be sent via facsimile to Ms. Valerie Frances at (202) 205–7808 or by electronic mail to *Valerie.Frances@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Valerie Frances, Executive Director, NOSB, National Organic Program, (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production, and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six committees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Livestock; Materials; Handling; and Policy Development.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 101 addenda to its recommendations and reviewed more than 269 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on April 19–20, 2006, in State College, PA.

The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000, (65 FR 80548). The rule became effective April 21, 2001.

The principal purposes of the meeting are to provide an opportunity for the NOSB to receive an update from the USDA/NOP and hear progress reports from NOSB committees regarding work plan items and proposed action items.

The Policy Development Committee will present recommendations regarding revisions to the NOSB Policy and Procedures Manual and discuss the development of a guide for new NOSB members. The Policy Development and Crops Committees will provide an update and will discuss issues regarding the development of a recommendation on temporary variances allowed for certified organic research facilities for products not to be marketed as organic.

The Crops Committee will present recommendations regarding guidance for the use of compost tea, vermiculture and dehydrated manure, and on petitioned materials: lime mud, sodium lauryl sulfate, sulfuric acid (to stabilize dehydrated manures), and calcium chloride. The Crops Committee will discuss issues related to public comments received concerning commercial availability requirements for the use of certified organic seed on certified organic farms. In addition, the Committee will provide an update to their work on developing guidance for the certification of hydroponic crops.

The Materials and Handling Committees will present a joint recommendation on determining when a product is agricultural versus nonagricultural. These same committees will also discuss their work to clarify the definitions of materials on the National List.

The Handling Committee will present a recommendation that will specify criteria necessary to facilitate determinations related to the commercial availability of organic agricultural ingredients. The Committee will also present, in closure of its review of the first sunset of substances under the requirements of the OFPA, a recommendation to remove colors from the National List and a recommendation to affirm their removal of bleached lecithin from the National List. The Committee will receive the report of the Pet Food Task Force regarding their efforts to draft standards for organic pet food. In addition, the Committee will discuss the status of materials petitioned for use in handling .

The Livestock Committee will invite public input on issues regarding the development of organic aquaculture (finfish) standards.

The Compliance, Accreditation, and Certification Committee (CACC) will present recommendations to address questions and answers regarding the labeling of certified organic products of retailers and private labelers. The CACC will present recommendations that address the standardization of information required on organic certificates, the addition of an expiration date, and procedures for managing expiration dates on certificates. Finally, the CACC will discuss future Peer Review Procedures.

Copies of the NOSB meeting agenda and additional information can be requested from Ms. Valerie Frances by telephone at (202) 720–3252; or by accessing the NOP Web site at *http://www.ams.usda.gov/nop*.

The Meeting is Open to the Public. The NOSB has scheduled time for public input for Tuesday, October 17, 2006, from 11 a.m. to 12 p.m. and from 1 p.m. to 5 p.m., and Wednesday, October 18, 2006, from 1:45 p.m. to 5 p.m. Individuals and organizations wishing to make an oral presentation at the meeting may forward their request by mail, facsimile, or e-mail to Valerie Frances at addresses listed in **ADDRESSES** above. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation. Written comments may also be submitted at the meeting. Persons submitting written comments at the meeting are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site *http://www.ams.usda.gov/nop* to view available documents prior to the meeting. Approximately 6 weeks following the meeting interested persons will be able to visit the NOSB portion of the NOP Web site to view documents from the meeting.

Dated: September 25, 2006.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 06–8419 Filed 9–29–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

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

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request A Review:

Not later than the last day of October 2006,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

Antidumping Duty Proceedings	Period
BRAZIL: Carbon and Certain Alloy Steel Wire Rod A–351–832	10/1/05 - 9/30/06
CANADA: Carbon and Certain Alloy Steel Wire Rod A–122–840	10/1/05 - 9/30/06
CANADA: Hard Red Spring Wheat A–122–847	10/1/05 - 1/1/06
INDONESIA: Carbon and Certain Alloy Steel Wire Rod A–560–815	10/1/05 - 9/30/06
ITALY: Pressure Sensitive Tape A–475–059	10/1/05 - 9/30/06
MEXICO: Carbon and Certain Alloy Steel Wire Rod A–201–830	10/1/05 - 9/30/06
MOLDOVA: Carbon and Certain Alloy Steel Wire Rod A–841–805	10/1/05 - 9/30/06
REPUBLIC OF KOREA: Polyvinyl Alcohol A–580–850	10/1/05 - 9/30/06
THE PEOPLE'S REPUBLIC OF CHINA: Barium Carbonate A–570–880	10/1/05 - 9/30/06
THE PEOPLE'S REPUBLIC OF CHINA: Barium Chloride A–570–007	10/1/05 - 9/30/06
THE PEOPLE'S REPUBLIC OF CHINA: Helical Spring Lock Washers A–570–822	10/1/05 - 9/30/06
THE PEOPLE'S REPUBLIC OF CHINA: Polyvinyl Alcohol A–570–879	10/1/05 - 9/30/06
TRINIDAD AND TOBAGO: Carbon and Certain Alloy Steel Wire Rod A–274–804	10/1/05 - 9/30/06
UKRAINE: Carbon and Certain Alloy Steel Wire Rod A–823–812	10/1/05 - 9/30/06

Countervailing Duty Proceedings	Period
BRAZIL: Carbon and Certain Alloy Steel Wire Rod C–351–833	1/1/05 - 12/31/05
CANADA: Hard Red Spring Wheat C–122–848	1/1/05 - 1/1/06
IRAN: Roasted In–Shell Pistachios C–507–601	1/1/05 - 12/31/05

Suspension Agreements	Period
RUSSIA: Uranium A–821–802	10/1/05 - 9/30/06

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must

[1] Or the next business day, if the deadline falls on a weekend, federalholiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of October 2006. If the Department does not receive, by the last day of October 2006, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 22, 2006.

Thomas F. Futtner,

Acting Office DirectorAD/CVD Operations, Office 4Import Administration.

[FR Doc. E6–16222 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

ACTION: Notice of Upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for November 2006

The following Sunset Reviews are scheduled for initiation in November 2006 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

	Department contact
Antidumping Duty Proceedings	
Honey from Argentina (A–357–812)	Dana Mermelstein, (202) 482–1391
Honey from the People's Republic of China (A–570–863)	Juanita Chen, (202) 482–1904
Welded Large Diameter Line Pipe from Japan (A–588–857)	Dana Mermelstein, (202) 482–1391
Welded Large Diameter Line Pipe from Mexico (A–201–828)	Dana Mermelstein, (202) 482–1391
Countervailing Duty Proceedings	
Honey from Argentina (C–357–813)	Dana Mermelstein, (202) 482–1391
Suspended Investigations	
No suspended investigations are scheduled for initiation in November 2006.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin''). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 15 days of the publication of the Notice of Initition.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 22, 2006.

Thomas F. Futtner,

Senior Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–16207 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year (''Sunset Review'') of the antidumping and countervailing duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers these same orders.

DATES: *Effective Date:* October 2, 2006.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review(s)* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth

in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) *(''Sunset Policy Bulletin'').*

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC case No.	ITC case No.	Country	Product	Department contact
A–570–864	731–TA–895	PRC	Pure Magnesium in Granular Form	Juanita Chen (202) 482–1904.
A–588–838	31–TA–739	Japan	Clad Steel Plate (2nd Review)	Brandon Farlander (202) 482–0182.
A–475–818	731–TA–734	Italy	Certain Pasta (2nd Review)	Brandon Farlander (202) 482–0182.
A–489–805	731–TA–735	Turkey	Certain Pasta (2nd Review)	Brandon Farlander (202) 482–0182.
Countervailing Duty Proceedings				
C–475–819	701–TA–365	Italy	Certain Pasta (2nd Review)	Brandon Farlander (202) 482–0182.
C–489–805	701–TA–366	Turkey	Certain Pasta (2nd Review)	Brandon Farlander (202) 482–0182.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the Department's regulations regarding Sunset Reviews (19 CFR 351.218) and *Sunset Policy Bulletin,* the Department's schedule of Sunset Reviews, case history information (i.e., previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet Website at the following address: *http://ia.ita.doc.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these Sunset Reviews must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review.

See 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: September 22, 2006.

Thomas F. Futtner,

Acting Office Director, AD/CVD Operations, Office 4, Import Administration.

[FR Doc. E6–16209 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

(C–475–817)

Oil Country Tubular Goods from Italy: Extension of Time Limit for Final Results of Expedited Five-year (Sunset) Review of Countervailing Duty Order

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

EFFECTIVE DATE: October 2, 2006.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for its final results in the expedited sunset review of the countervailing duty (CVD) order on oil country tubular goods (OCTG) from Italy. As a result of this extension, the Department intends to issue the final

results of the sunset review no later than December 19, 2005.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1396 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Extension of Final Results:

On June 1, 2006, the Department of Commerce (the Department) published, in the **Federal Register**, the notice of initiation of the second five-year sunset review of the countervailing duty order on OCTG from Italy, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-year (''Sunset'') Reviews*, 71 FR 31153 (June 1, 2006). On July 21, 2006, the Department determined that the substantive responses filed by the Government of Italy (GOI), the European Union/Delegation of the European Commission (EU) and Dalmine S.p.A. (Dalmine) were inadequate and that this sunset review would be conducted on an expedited basis. *See* July 21, 2006 memo from the sunset team to Stephen J. Claeys, through Barbara E. Tillman, *Adequacy Determination: Sunset Review of the Countervailing Duty Order on Oil Country Tubular Goods from Italy (Second Review)*. This memorandum is on file in the Central Records Unit, room B–099 of the main Commerce building. The Department's final results of this review were scheduled for September 29, 2006; however, the Department needs additional time to make its final determination.

In accordance with section 751(c)(5)(B) of the Act, the Department may extend the period of time for making its final determination in a sunset review by not more than 90 days, if it determines that the review is extraordinarily complicated. The Department needs additional time to consider issues related to whether a countervailable subsidy is likely to continue or recur if the order is revoked. Specifically, the Department has determined that it is necessary to verify certain of the information provided by respondents in this review. Therefore, the Department will extend the deadline in this proceeding, and, as a result, intends to issue the final results of the sunset review of the countervailing duty order on OCTG from Italy, no later than December 19, 2006, an additional 81 days from the date of initiation of this review.

This notice is issued and published in accordance with sections 751(c)(5)(B) and (C) of the Act.

Dated: September 26, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–16232 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Amendment to Notice

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: This notice amends the June 30th notice (71 FR 37543) to extend the deadline to October 27, 2006, for submission of applications for the Summit only portion of the Department of Commerce Under Secretarial Business Development Mission to India and to raise the ceiling on the number of participants for the Summit portion of the Mission to 230. These changes are implemented in response to overwhelming interest on the part of the U.S. business community and an agreement on the part of the Summit sponsors in India to accommodate an increased participant base. The application for the Summit portion of the India Business Development Mission is available in a downloadable fax-back version on the event Web site: *http://export.gov/indiamission*. The application may also be completed and submitted online. Leaders of U.S. business, industry, education, and state and local government are among those encouraged to take part in the Summit, where strategic breakout sessions will provide access to India's high-level business, industry, and government representatives and insights into the country's trade and investment climate. The deadline to apply for the post-Summit spin-off missions to be held in Bangalore, Kolkata, Chennai, Hyderabad, Mumbai, and New Delhi remains October 2, 2006. The spin-off missions are open to qualified U.S. business representatives seeking one-on-one business appointments with prospective agents, distributors, partners, and end-users. Applications for the spin-off missions are available on the above-cited event Web site. Selection criteria and procedures for the Summit and spin-off missions are included in the Trade Mission Statement on the Web site.

FOR FURTHER INFORMATION CONTACT: Nancy Hesser at the Department of Commerce in Washington, DC. Telephone: (202) 482–4663. Fax: (202) 482–2718. Both downloadable and online versions of the application for the Summit and the spin-off missions are available on the event Web site: *http://export.gov/indiamission*.

Nancy Hesser,

Manager, Commercial Service Trade Missions Program.

[FR Doc. E6–16221 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090706D]

Protection of Marine Mammals; Notice of Intent to Prepare an Environmental Impact Statement

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

ACTION: Notice of intent to prepare and environmental impact statement (EIS); notice of public scoping meetings.

SUMMARY: The National Marine Fisheries Service (NMFS) announces its intent to prepare an EIS to assess the potential impacts on the human environment resulting from proposed regulations to protect wild spinner dolphins (*Stenella longirostris*) in the main Hawaiian Islands from ''take,'' as defined in the Marine Mammal Protection Act (MMPA) and its implementing regulations; and announces public scoping meetings.

DATES: Four public scoping meetings are scheduled to obtain comments on the scope of issues to be addressed in the EIS. See **SUPPLEMENTARY INFORMATION** for specific times and locations. In addition to obtaining comments in the public scoping meetings, NMFS will also accept written and electronic comments. Comments must be received no later than 5 p.m. h.s.t. on November 24, 2006.

ADDRESSES: Written comments on the scope of the EIS should be submitted to Chris E. Yates, Assistant Regional Administrator for Protected Resources, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814. Written comments may also be submitted by e-mail to *Spinner.Scoping@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Lisa Van Atta, NMFS, Pacific Islands Region; telephone: (808) 944–2257; fax: (808)

944–2142; e-mail: *alecia.vanatta@noaa.gov*. For information regarding the EIS process, contact Jayne LeFors, NMFS, Pacific Islands Region; telephone: (808) 944–2277; fax: (808) 944–2142; e-mail: *jayne.lefors@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Public Scoping Meetings – Specific Times and Locations

The Honolulu, Oahu, HI scoping meeting: October 17, 2006, 6 p.m. - 9 p.m. The meeting location is the McCoy Pavilion, Ala Moana Regional Park, 1201 Ala Moana Boulevard, Honolulu, HI, 96814, telephone: (808) 823–1636.

The Kapa'a, Kauai, HI scoping meeting: October 19, 2006, 6 p.m. - 9 p.m. The meeting location is the Aloha Beach Resort Kauai, Pi'ikoi Room, 3–5920 Kuhio Highway, Kapa'a, HI, 96746, telephone: (808) 823–1636.

The Kihei, Maui, HI scoping meeting: October 25, 2006, 6 p.m. - 9 p.m. The meeting location is the Hawaiian Islands Humpback Whale National Marine Sanctuary, Headquarters office, 726 S. Kihei Road, Kihei, HI, 96753, telephone: (808) 879–2818 or (800) 831–4888.

The Kailua-Kona, HI scoping meeting: October 26, 2006, 6 p.m. - 9 p.m. The meeting location is King Kamehameha's Kona Beach Hotel, 75–5660 Palani Road, Kailua-Kona, HI, 96740, telephone: (808) 329–2911.

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jayne LeFors, (808) 944–2277 or fax (808) 944–2142 at least 5 days before the scheduled meeting date.

Background

Viewing wild marine mammals in Hawaii is a popular recreational activity for both tourists and residents alike. In the past, most efforts focused on viewing humpback whales (*Megaptera novaeangliae*) during the winter months when the whales migrate from their feeding grounds off the coast of Alaska to Hawaii's warm and protected waters to breed and calve. However, in recent years, increasing efforts have focused on viewing small cetaceans, with a particular emphasis on Hawaiian spinner dolphins (*Stenella longirostris*), which can be routinely found close to shore in shallow coves and bays throughout the main Hawaiian Islands. NMFS has received an increasing number of complaints from constituents charging that spinner dolphins are being routinely disturbed by people attempting to closely approach and interact with the dolphins by vessel (motor powered or kayak) or in the water (''swim-with-wild-dolphin'' activities). Concerns have been expressed by officials from the Hawaii Department of Land and Natural Resources and the U.S. Marine Mammal Commission (MMC), as well as various members of the public, including representatives of the Native Hawaiian community, scientific researchers, wildlife conservation organizations, public display organizations, and some commercial tour operators.

NMFS encourages members of the public to view and enjoy Hawaiian spinner dolphins, and supports responsible wildlife viewing as articulated in agency guidelines (see web citation below). However, activities currently conducted by individuals and by commercial ''swim-with'' programs frequently do not operate in accordance with these guidelines. NMFS is concerned that activities occurring in Hawaii have the potential to cause detrimental individual and population-level impacts to these dolphins.

Hawaiian spinner dolphins routinely utilize shallow coves and bays close to shore during the day to rest, care for their young, and avoid predators, before traveling to deeper water at night to hunt for food. As the dolphins begin or end their resting period in a bay, they engage in aerial spinning and leaping behaviors that are noticeable from shore. However, when they are in a period of deep rest, their behavior consists of synchronous dives and extended periods swimming in quiet formation along the shallow bottom (Norris and Dohl 1980; Norris *et al.*, 1985; Wells and Norris 1994; Wursig *et al.* 1994).

Scientific research studies have documented the effects of human disturbance on dolphins. In a recently published study conducted at Oahu's Makua Beach, Danil *et al.* (2005) found that Hawaiian spinner dolphins departed the resting bay earlier and spent shorter diving periods, which was indicative of delayed or compressed resting behavior, while swimmers were present in the bay.

Additionally, a study in western Australia documented a significant decline in wild bottlenose dolphin (*Tursiops* sp.) abundance resulting from long-term exposure to dolphin tour operations (Bejder *et al.*, 2006; Bejder *et al.*, In press). While there are some major differences between bottlenose dolphins and spinner dolphins, their responses to exposure to tour operations would likely be similar. The authors suggest that similar declines would be devastating for small, closed, resident, or endangered cetacean populations like spinner dolphins.

Current MMPA Prohibitions and NMFS Guidelines and Regulations

The Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.* (MMPA) prohibits the ''take'' of marine mammals. Section 3(13) of the MMPA defines the term ''take'' as ''to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.'' Section 3(18)(A) of the MMPA defines the term ''harassment'' as ''any act of pursuit, torment, or annoyance which (I) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.''

In addition, NMFS regulations implementing the MMPA have amended the term ''take'' to include ''the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild'' (50 CFR 216.3).

Although Hawaiian spinner dolphins are not a listed species under the Endangered Species Act (ESA), NMFS has implemented specific regulations for some ESA-listed marine mammals which address interactions with humans in the wild. These regulations prohibit approaches closer than 100 yards (91.4 m) to humpback whales in Hawaii and Alaska, and approaches closer than 500 yards (460 m) to right whales in the North Atlantic (50 CFR 224.103), as well as approaches within 3 nautical miles (5.5 km) of particular Steller sea lion (*Eumetopias jubatus*) rookeries in the Aleutian Islands and Gulf of Alaska (50 CFR 223.202). However, specific approach distance regulations have not yet been implemented under the MMPA for other species of marine mammals.

The MMPA provides limited exceptions to the prohibition on ''take'' for activities such as scientific research, public display, and incidental take in commercial fisheries. Such activities require a permit or authorization, which may be issued after a thorough agency review. In some cases, the activities requiring a permit and receiving agency review (e.g., photo identification research) are significantly less intrusive than certain known tourist activities (e.g., swimming with wild dolphins). However, the MMPA does not provide an exception to the ''take'' prohibition for commercial or recreational wildlife

viewing activities, so they are not eligible for permits or authorizations. Instead, wildlife viewing should be conducted in a manner that does not cause ''take,'' which is consistent with the general philosophy of responsible wildlife viewing to unobtrusively observe the natural behavior of wild animals in their habitats without causing disturbance.

Each of the five NMFS Regions has developed recommended viewing guidelines to educate the general public on how to responsibly view marine mammals in the wild and avoid causing a ''take'' by ''harassment.'' The guidelines developed by the NMFS Pacific Islands Regional Office for marine wildlife in Hawaii are available at: *http://www.nmfs.noaa.gov/pr/education/hawaii/*.

The guidelines for Hawaii recommend that people view wild dolphins from a safe distance of at least 50 yards (45 m) and to refrain from trying to chase, closely approach, surround, swim with, or touch the animals. To support the guidelines in Hawaii, NMFS has partnered with the State of Hawaii and the Hawaiian Islands Humpback Whale National Marine Sanctuary over the past several years to promote safe and responsible wildlife viewing practices through the development of outreach materials, training workshops, and public service announcements. NMFS' education and outreach efforts have also been supported by a partnership with the Watchable Wildlife program, a consortium of Federal and state wildlife agencies and wildlife interest groups that encourages passive viewing of wildlife from a distance for the safety and well-being of both animals and people (Duda 1995, Oberbillig 2000, Clark 2006).

However, despite the regulations, guidelines, and outreach efforts, extensive interactions with wild spinner dolphins continue to occur in Hawaii. Advertisements on the internet and in local media in Hawaii promote activities that clearly contradict the NMFS guidelines and appear to depict harassment of the animals. NMFS has also received inquiries from members of the public and commercial tour operators requesting clarification on NMFS' policy and the MMPA restrictions on closely approaching, swimming with, or interacting with wild cetaceans.

In response to the concerns expressed about spinner dolphin disturbance, NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on December 12, 2005 (70 FR 73426) to alert the public that it would be considering whether to implement additional regulations or other conservation measures as appropriate to protect wild spinner dolphins in the main Hawaiian Islands from people attempting to closely approach and interact with the dolphins by vessel (motor powered or kayak) or in the water (''swim-with-wild-dolphin'' activities). The ANPR with the complete background information can be found at *http://swr.nmfs.noaa.gov/pir/index.htm* along with the scientific literature cited.

Public comment was solicited on a range of alternatives being considered to address the issue. A total of 191 comments were received from a wide range of stakeholders and recommended a variety of actions for NMFS to consider, ranging from no regulations to permanent closure of areas the dolphins use for resting and shelter. Based upon the comments received during this process, the original alternatives were further refined to provide a basis for the alternatives to be analyzed in the EIS.

The EIS will consider the proposed action and several alternatives to protect wild spinner dolphins in the main Hawaiian Islands from human activities that may result in their unauthorized taking, or that may cause detrimental individual or population-level impacts by diminishing the value of habitat they routinely use for resting. NMFS is seeking public comment on both the proposed action and the preliminary alternatives during the public scoping period, and encourages the public to submit information on these and other potential alternatives for consideration.

Proposed Action

NMFS has identified the proposed action as instituting partial (time-area based) closures for certain specified spinner dolphin resting habitat (or a subset thereof) in the main Hawaiian Islands. Under the proposed action, NMFS would identify the primary areas utilized by spinner dolphins for resting habitat on each of the main Hawaiian Islands, and would institute closures of these areas during certain time periods. Closure types to be considered could include entire bays, but only during peak spinner dolphin resting hours (e.g., between 9 a.m. and 2 p.m.), or closures only within specified zones within spinner dolphin resting habitat (e.g., as demarcated by buoys). Such closures would attempt to provide optimal protection for spinner dolphins and their resting habitat, while minimizing the impact on ocean users. Exemptions within certain bays for harbors transit (ingress and egress of vessels), traditional cultural practices, fishing activities, emergency situations, and other activities would be considered.

Alternatives

NMFS has also identified four additional alternatives to the proposed action: (1) maintaining the status quo (the No Action alternative); (2) establishing a minimum distance limit inside which approach of spinner dolphins would be unlawful; (3) regulating certain specified human behavior within NMFS-identified spinner dolphin resting habitat; and (4) instituting a complete closure of NMFS-identified spinner dolphin resting habitat (or a subset thereof).

Alternative 1

Under the No Action alternative, which is required by CEQ regulations (40 CFR 1502.14), NMFS would take no additional regulatory action to protect spinner dolphins from human activities in the main Hawaiian Islands, thereby perpetuating the status quo. The current ''take'' provisions of the MMPA and its implementing regulations would be the mechanisms through which unlawful interactions with spinner dolphins would be addressed. Under the No Action alternative, the current (and increasing) frequency and intensity of human interactions with spinner dolphins would likely continue.

Alternative 2

Alternative 2 would establish a minimum distance limit, similar to minimum approach rules for humpback whales in Hawaii (50 CFR 224.103(a)) and Alaska (50 CFR 224.103(b)), and for right whales in the North Atlantic (50 CFR 224.103(c), within which approaching spinner dolphins in the main Hawaiian Islands, by any means, would be unlawful. Such a limit would attempt to accommodate a reasonable level of dolphin viewing opportunities while minimizing potential detrimental impacts from human interactions. NMFS may consider the current Pacific Islands Regional Responsible Marine Wildlife Viewing guideline of 50 yards (45 m). NMFS may also consider exemptions for situations in which approach within the established limit is not reasonably avoidable (e.g., when human safety is at risk).

Alternative 3

Alternative 3 would regulate human behavior while in NMFS-identified spinner dolphin resting areas in the main Hawaiian Islands. This alternative would reiterate all activities currently prohibited by the MMPA and its implementing regulations, but would also prohibit other specified human activities, such as swimming with spinner dolphins. This alternative would also prohibit specified watercraft

(motor vessels, personal thrillcraft, kayaks, etc.) activities, such as placing a vessel in the predictable path of spinner dolphins in order to facilitate an encounter; as well as regulate watercraft travel (e.g., speed restrictions) within spinner dolphin resting areas.

Alternative 4

Alternative 4 would adopt a very restrictive approach by identifying all known spinner dolphin resting areas in the main Hawaiian Islands and institute a complete closure in these areas to all commercial and non-commercial activities. Exemptions within certain bays for harbors transit (ingress and egress of vessels) and emergency situations would be considered.

Public Involvement and the Scoping Process

NMFS' intent is to afford an opportunity for the public to participate in this process, including interested citizens, commercial operators, and environmental organizations; any affected low-income or minority populations; affected local state, and Federal agencies; and any other agencies with jurisdiction or special expertise concerning environmental impacts to be addressed in the EIS.

NMFS will hold public scoping meetings and accept oral and written comments on the scope of issues that should be addressed in the EIS; to determine the issues of concern with respect to practical considerations involved in applying the proposed regulations; to identify relevant environmental and socioeconomic issues to be addressed in the analysis; and to determine whether NMFS is addressing the appropriate range of alternatives. The public, as well as Federal, state, and local agencies, are encouraged to participate in this scoping process. The dates and locations of these meetings appear in this **Federal Register** notice (See **SUPPLEMENTARY INFORMATION**). The agency also invites the public to submit comments by e-mail or regular mail (See **ADDRESSES**).

Authority: Authority: 16 U.S.C. 1361 *et seq.*

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Dated: September 26, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E6–16202 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092506C]

Marine Mammals; File No. 978–1857

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Paul Nachtigall, Ph.D., Hawaii Institute of Marine Biology, University of Hawaii, P.O. Box 1106, Kailua, HI 96734, has applied in due form for a permit to conduct research on captive cetaceans.

DATES: Written, telefaxed, or e-mail comments must be received on or before November 1, 2006.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 978–1857.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Dr. Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations

governing the taking and importing of marine mammals (50 CFR part 216).

The applicant has requested a 5–year permit to conduct studies of basic hearing and echolocation in up to three bottlenose dolphins (*Tursiops truncatus*) and one false killer whale (*Pseudorca crassidens*) in captivity at the Hawaii Institute of Marine Biology. Researchers would conduct hearing measurements using suction cup sensors to monitor electrical signals in the brain in response to sound and echolocation clicks. The research is accomplished using trained behaviors in which the animals voluntarily participate in the activities and can leave the testing area at any time.

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

Dated: September 26, 2006.

P. Michael Payne,

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

[FR Doc. E6–16203 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092606H]

Gulf of Mexico Fishery Management Council; Public Meeting

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 via conference call.

DATES: The conference call will be held October 18, 2006, at 10 a.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: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Council will hold a conference call to potentially reconsider a motion to table further action on Amendment 27 to the Reef Fish Fishery Management Plan (FMP)/Amendment 14 to the Shrimp FMP until December 31, 2006.

Although other non-emergency issues not on the agenda may come before the Council 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 of the Council 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.

The conference call will begin at 10 a.m. EDT and conclude no later than 12 noon 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:

Galveston, TX

4700 Avenue U, Galveston, TX 77551; Contact: Rhonda O'Toole, (409) 766–3500;

St. Petersburg, FL

263 13th Avenue South, St. Petersburg, FL 33701; Contact: Stephen Holiman, (727) 551–5719; and

Panama City, FL

3500 Delwood Beach Road, Panama City, FL 32408; Contact: Janice Hamm, telephone: (850) 234–6541.

Special Accommodations

The conference call is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: September 26, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–16141 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092606E]

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: The Pacific Fishery Management Council's (Council) Groundfish Allocation Committee (GAC) will hold a working meeting, which is open to the public.

DATES: The GAC meeting will be held Wednesday, October 18, 2006, from 8:30 a.m. until business for the day is completed. The GAC will reconvene Thursday, October 19, 2006, at 8:30 a.m. until their business is completed.

ADDRESSES: The GAC meeting will be held at the Red Lion Hotel on the River-Jantzen Beach, Glisan Room, 909 N. Hayden Island Drive, Portland, OR 97217; telephone: (503) 283–4466.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GAC meeting is to develop draft alternatives for allocating Pacific Coast groundfish stocks and stock complexes to the various West Coast fishery sectors for analysis. No management actions will be decided by the GAC. The GAC's role will be development of recommendations and alternatives for analysis for consideration by the Council at its November 2006 meeting in Del Mar, CA.

Although non-emergency issues not contained in the meeting agenda may come before the GAC for discussion, those issues may not be the subject of formal GAC action during this meeting. GAC 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 Fishery Conservation and Management Act, provided the public has been notified of the GAC'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 Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 26, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–16140 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092606F]

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: The Pacific Fishery Management Council's (Council) Highly Migratory Species Management Team (HMSMT) and Highly Migratory Species Advisory Subpanel (HMSAS) will hold a joint work session, which is open to the public.

DATES: The HMSMT/HMSAS work session will be held on Thursday, November 2, 2006, from 8:30 a.m. until 5 p.m. and on Friday, November 3, 2006, beginning at 8:30 a.m. until business is completed.

ADDRESSES: The work sessions will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, Green Room, 8604 La Jolla Shores Drive, La Jolla, CA 92037; telephone: (858) 546–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The HMSMT/HMSAS work session will review U.S. and Canadian albacore catch and effort data including an industry discussion of data use, and highly migratory species (HMS)-related topics that are scheduled to appear on the Council's November 12–17, 2006 meeting agenda. These topics include final action on HMS management measures for the April 1, 2007–March 31, 2009, management period; HMS fishery management plan amendment to address overfishing of bigeye tuna; review of exempted fishing permit proposals for the 2007 season; and potential overfishing status determination for yellowfin tuna in the eastern Pacific Ocean. The two committees may also plan future workload, including recommendations for future meetings.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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 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 Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

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

Dated: September 26, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–16142 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092606G]

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: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting, which is open to the public.

DATES: The GMT meeting will be held Tuesday, October 17, 2006, from 8:30 a.m. until business is completed.

ADDRESSES: The GMT meeting will be held at the Red Lion Hotel on the River-Jantzen Beach, Glisan Room, 909 N. Hayden Island Drive, Portland, OR 97217; telephone: (503) 283–4466.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Bozzi; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GMT meeting is to discuss the Trawl Individual Quota alternatives under development by the Council. Specifically, the GMT will discuss development of statements that address the management feasibility of particular aspects of the proposed alternatives. No management actions will be decided by the GMT on these issues. The GMT's statements will be provided to the Council and its advisory bodies at a later point to facilitate decision-making.

Although non-emergency issues not contained in the meeting agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT 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 Fishery Conservation and Management Act, provided the public has been notified of the GMT'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 Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 26, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–16143 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Announcement of Performance Review Board Members

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: 5 CFR 430.310 requires agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. This notice announces the names of new and existing members of the National Telecommunications

and Information Administrations' Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Anthony Calza, National Telecommunications and Information Administration, Chief, Management Division, at (202) 482–2196, Room 4888, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay level increases, and Presidential Rank Awards for members of the Senior Executive Service.

The Acting Assistant Secretary for Communications and Information, John M.R. Kneuer, has named the following members of the National Telecommunications and Information Administration Performance Review Board:

1. Frederick R. Wentland, Associate Administrator for Spectrum Management (Chairperson).
2. Bernadette McGuire-Rivera, Associate Administrator for Telecommunication and Information Applications (existing).
3. Alan W. Vincent, Associate Administrator for Telecommunication Sciences and Director, Institute for Telecommunication Sciences (existing).
4. Michael J. Crison, Director, Requirements, Planning and Systems Integration Division, National Oceanic and Atmospheric Administration (Outside reviewer).
5. Daniel C. Hurley, Director, Communications and Information Infrastructure Assurance Program, (new).

Dated: September 26, 2006.

Ronald A. Glaser,

Human Resources Officer.

[FR Doc. E6–16223 Filed 9–29–06; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Software Assurance will meet in closed session on October 17, 2006; at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. This meeting is to continue charting the direction of the study and assessing the current capabilities and vulnerabilities of DoD software.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the risk that DoD runs as a result of foreign influence on its software and to suggest technology and other measures to mitigate the risk.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: CDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil,* or via phone at (703) 571–0083.

Dated: September 26, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–8393 Filed 9–29–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Structure for Transformation will meet in closed session on December 11 and, 2006; January 4 and 5, 2007; February 21 and 22, 2007; March 28 and 29, 2007; April 19 and 20, 2007; May 23 and 24, 2007; and June 12 and 13, 2007 at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. These meetings will characterize the degree of changed needed in industry due to the changing nature of DoD and the industrial base. The meetings will also examine the effectiveness of existing mitigation measures and make recommendations to ensure future competition and innovation throughout all tiers of the defense industrial base. The briefings will contain proprietary material from the private business sector.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Describe the defense industry required to cope with the international security environment in the 21st century. Additionally the task force will address the implications for the industrial base of increased DoD acquisition of services, as well as the implications for the financial viability of the defense industrial base as the sector adapts to changing DoD needs for defense-related products and services.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(4) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Maj Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *charles.lominac@osd.mil,* or via phone at (703) 571–0081.

Dated: September 26, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–8394 Filed 9–29–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on VTOL/STOL will meet in closed session on October 11–12, 2006; at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This meeting continues the task force's work and will consist of a classified executive session on current technologies and programs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At

these meetings, the Defense Science Board Task Force will: assess the features and capabilities VTOL/STOL aircraft should have in order to support the nation's defense needs through at least the first half of the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: CDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil,* or via phone at (703) 571–0083.

Dated: September 26, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–8395 Filed 9–29–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Impact Evaluation of a School-based Violence Prevention Program

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (the Department) publishes this notice of a new system of records entitled ''Impact Evaluation of a School-based Violence Prevention Program,'' 18–13–15. The purpose of the impact evaluation is to determine the effectiveness of a violence prevention program comprised of two violence prevention interventions for middle schools using a rigorous research design. Currently, there is lack of rigorous research concerning school-based violence prevention in middle schools. The Department's contractor, RTI International (RTI), selected the violence prevention interventions to be evaluated through an open competition with advisement from a panel of experts in the field of violence prevention. RTI selected the Responding in Peaceful and Positive Ways (RiPP) and Best Behavior interventions and combined the two approaches into a single violence prevention program with two components: (1) A curriculum-based model to facilitate students' social competency, problem solving, and self-control skills, and (2) a whole-school model that targets school practices and policies usually through classroom management or teaching strategies, or through systemic reorganization and modification of school management, disciplinary policies, and enforcement procedures. The RiPP intervention will provide the curriculum-based component of the program , and the Best Behavior intervention will provide the whole-school component of the program.

The system will contain information about students, teachers, and other school staff members in schools that are randomly assigned either to implement the violence prevention program or not to implement the program. The sample will consist of approximately 20,000 students and approximately 3,000 teachers and other school staff members drawn from approximately 40 schools over 3 years. Each of the 40 schools that participate in the study will be randomly assigned either to receive the violence prevention program or not to receive the program so that approximately 20 schools are in each study condition. At each school, sixth graders will be surveyed in the 2006–2007 school year, seventh graders in the 2007–2008 school year, and eighth graders in the 2008–2009 school year. The teacher survey will be administered to a random sample of 24 teachers (stratified by grade) at each of the middle schools participating in the study. Teachers will complete the survey in spring of 2007, 2008, and 2009, with a new random sample of teachers selected each year. Other school staff members will be interviewed about victimization and their experiences implementing the program.

The system of records will include students' names, demographic information (such as date of birth and race/ethnicity), self-reported attitudes about violence and feelings of safety, self-reported victimization, and self-reported violent and delinquent behaviors. The system also will include information from school records such as records of students' attendance, suspensions, expulsions, and school policy violations. The system also will include teachers' and other school staff members' self-reported victimization at school as well as their experiences with training and technical assistance related to their schools' violence prevention efforts.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records described in this notice on or before November 1, 2006.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Government Reform, and the Acting Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 27, 2006. This system of records will become effective at the later date of: (1) The expiration of the 40 day period for OMB review on November 6, 2006 or (2) November 1, 2006, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses of this system of records to Dr. Ricky Takai, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502D, Washington, DC 20208–0001. Telephone: (202) 208–7083. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov*.

You must include the term ''Violence Prevention Impact Study'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 502D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Ricky Takai. Telephone: (202) 208–

7083. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act 5 U.S.C. 552a requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to information about individuals that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of new or altered systems of records in the **Federal Register** and to submit reports to the Administrator of the Office of Information and Regulatory Affairs, OMB, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Chair of the House Committee on Government Reform, whenever the agency publishes a new or altered system of records.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department that are 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 CFR is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: August 15, 2006.

Grover Whitehurst,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education (Department), publishes a notice of a new system of records to read as follows:

18–13–15

SYSTEM NAME:

Impact Evaluation of a School-based Violence Prevention Program.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502D, Washington, DC 20208–0001.

(2) RTI International, 3040 Cornwallis Road, Research Triangle Park, NC 12194.

(3) Tanglewood Research, Inc., 7017 Albert Pick Road, Suite D, Greensboro, NC 27409.

(4) Pacific Institute for Research and Evaluation (PIRE), 1516 Franklin Street, Chapel Hill, NC 27514.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on students, school teachers, and other school staff members who are participating in the Impact Evaluation of a School-based Violence Prevention Program. The purpose of the impact evaluation is to determine the effectiveness of a violence prevention program for middle schools using a rigorous research design. Currently, there is lack of rigorous research concerning school-based violence prevention in middle schools. Through an open competition with advisement from a panel of experts in the field of violence prevention, the Department's contractor, RTI, selected two violence prevention interventions and combined them into a single program for the purpose of this evaluation. The program has the following two components: (1) A curriculum-based model to facilitate students' social competency, problem solving, and self-control skills, and (2) a whole-school model that targets school practices and policies usually through classroom management or teaching strategies, or through systemic reorganization and modification of school management, disciplinary policies, and enforcement procedures. The RiPP intervention will provide the curriculum-based component of the program and the Best Behavior intervention will provide the whole-school component of the program.

The study sample consists of approximately 20,000 students and approximately 3,000 teachers and other school staff members drawn from approximately 40 middle schools over 3 years. Participation of students, teachers, and other school staff members in the evaluation is voluntary.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes students' names, demographic information (such as date of birth and race/ethnicity), self-reported attitudes about violence and feelings of safety, self-reported victimization, and self-reported violent and delinquent behaviors. The system also will include information from school records such as records of students' attendance, suspensions, expulsions, and school policy violations. The system also will include teachers' and other staff members' self-reported victimization at school as well as their experiences with training and technical assistance related to their schools' violence prevention efforts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The evaluation being conducted is authorized under sections 4111(a)(2)(A) and 4122(a) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA) (20 U.S.C. 7111(a)(2)(A) and 7132(a)), which limits the amount of funds available for program evaluation to $2,000,000 during each fiscal year. Implementation of the violence prevention program being evaluated is authorized under section 4121(a)(2) of the ESEA (20 U.S.C. 7131(a)(2)). The evaluation is also authorized under sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563).

PURPOSE(S):

The information in this system will be used for the following purposes: (1) To support an impact evaluation of a violence prevention program for middle schools; and (2) to provide information for improvement of programs within the Department's Office of Safe and Drug-free Schools.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records

without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting and publication of data by the Institute of Education Sciences (IES).

Contract Disclosure. If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records on CD–ROM, and the contractor and subcontractors maintain data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed by a number assigned to each student, each teacher or other school staff member that is cross-referenced by the individual's name on a separate list. A list of names of the students whose parents have consented to their participation in the impact evaluation, as well as a list of names of participating teachers and other school staff members will be entered into a Microsoft Access database for purposes of tracking over the three years of the study.

SAFEGUARDS:

All physical access to the Department's site, and the site of the Department's contractor and subcontractors where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This computer system permits data access to Department and contract staff only on a ''need to know'' basis, and controls individual users' ability to access and alter records within the system.

The Department's contractor, RTI, and its subcontractors, Tanglewood and PIRE, have established a set of procedures to ensure confidentiality of data. The systems of RTI, Tanglewood, and PIRE ensure that information identifying individuals is in files physically separated from other research data. RTI and its subcontractors will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. All data will be kept in locked file cabinets during nonworking hours and work on hardcopy data will take place in a single room except for data entry. Physical security of electronic data also will be maintained. Security features that protect project data include: Password-protected accounts that authorize users to use the system of records but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; e-mail passwords that authorize the user to access mail services; and additional security features that the network administrator establishes for projects as needed. The contractor and subcontractor employees who maintain (collect, maintain, use, or disseminate) data in this system must comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules in Part 3 (Research Projects and Management Study Records) and Part 14 (Electronic Records).

SYSTEM MANAGER AND ADDRESS:

Ricky Takai, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502D, Washington, DC 20208–0001.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

The system includes students' names, demographic information (such as date of birth and race/ethnicity), self-reported attitudes about violence and feelings of safety, self-reported victimization, and self-reported violent and delinquent behaviors. The system also will include information from school records such as records of students' attendance, suspensions, expulsions, and school policy violations. The system also will include teachers' and other school staff members' self-reported victimization at school as well as their experiences with training and technical assistance related to the violence prevention program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E6–16172 Filed 9–29–06; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Request for Substantive Comments on Procedural Manual for the Election Assistance Commission's Voting System Testing and Certification Program; Proposed Information Collection: Request for Comments on Information Collection Burden; U.S. EAC Voting System Testing and Certification Program

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: The EAC has drafted a procedural manual for its Voting System Testing and Certification Program. This program sets administrative procedures for obtaining an EAC Certification for voting systems. Participation in the program is strictly voluntary. The program is mandated by 42 U.S.C. § 15371. The purpose of this notice is twofold: (1) To request public comment on the substantive aspects of the program (2) to request public comment on the proposed collection of

information pursuant to the emergency processing provisions of the Paperwork Reduction Act as submitted to the Office of Management and Budget (OMB).

(1) Substantive Comments: The EAC seeks substantive comments from the public on its proposed procedural manual. Please submit comments consistent with the information below. Comments should identify and cite the section of the manual at issue. Where a substantive issue is raised, please propose a recommended change or alternative policy. This publication and request for comment is not required under the rulemaking, adjudicative or licensing provisions of the Administrative Procedures Act (APA). It is a voluntary effort by the EAC to gather input from the public on the EAC's administrative procedures for certifying or decertifying voting systems. Furthermore, this request by the EAC for public comment is not intended to make any of the APA's rulemaking provisions applicable to development of this or future EAC procedural programs.

DATES: *(Comments):* Submit written or electronic comments on this draft procedural manual on or before 5 p.m. EDT on October 31, 2006.

ADDRESSES: Submit comments on-line on EAC's Web site: *http://www.eac.gov;* via mail to Brian Hancock, Director of Voting System Certification, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, DC 20005; or via fax to 202–566–1392. An electronic copy of the proposed guidance may be found on the EAC's Web site *http://www.eac.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Hancock, Director of Voting System Certification, 1225 New York Avenue, Suite 1100, Washington, DC, (202) 566–3100, Fax: (202) 566–1392.

(2) Comments on the Proposed Collection of Information: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the EAC is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

The EAC is requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. The EAC is requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320(a)(2)(ii). The information collection at issue is necessary in order to provide for the certification of voting systems as mandated by the Help America Vote Act of 2002 (42 U.S.C. 15371). The EAC cannot reasonably comply with the normal clearance procedures because failure to implement this program in an expedited fashion is reasonably likely to result in a public harm, as stated in 5 CFR 1320.13(a)(2)(i).

Approval of this emergency collection is essential in order to comply with Help America Vote Act of 2002 (42 U.S.C. 15371). HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA specifically requires the EAC to ''provide for the certification, de-certification and re-certification of voting system hardware and software.'' This mandate represents the first time the Federal government will provide for the voluntary testing and certification of voting systems, nationwide. In response to this HAVA requirement, the EAC is developing the Voting System Testing and Certification Program. This program requires the submission and retention of information related to voting systems and voting system manufacturers.

Until recently, national voting system certification was conducted by a private membership organization, the National Association of State Election Directors (NASED). NASED certified voting systems for a over a decade, using standards issued by the Federal government. The organization terminated its certification efforts on July 10, 2006. While the EAC and NASED have worked together to provide for the certification of emergency modifications necessary to properly field voting systems for the 2006 General Election, there is presently no mechanism in place to test and certify new systems or to process modifications for the 2008 Federal elections. Given the fact that (1) it can take years to develop, test, certify, sell and field a new or modified voting system, and (2) a large volume of voting systems (new, existing and modified) are expected to be submitted to the EAC upon initiation of the new Certification Program, it is imperative that the EAC's Voting System Testing and Certification Program begin on the earliest possible date. The 2008 Federal elections are less than 2 years away. Ensuring that the certified voting systems are available for the 2008 Election Cycle is essential to the public welfare.

1. *Type of Information Collection Request:* New collection;

2. *Title of Information Collection:* EAC Voting System Testing and Certification Program Manual;

3. *Use:* HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. 15371). Section 231(a)(1) of HAVA specifically requires the EAC to ''* * * provide for the certification, de-certification and re-certification of voting system hardware and software by the accredited laboratories.'' The EAC will perform this mandated function through the use of its Voting System Testing and Certification Program. Voting systems certified by the EAC will be used by citizens to cast votes in Federal Elections. Therefore, it is paramount that the program operates in a reliable and effective manner. In order to certify a voting system, it is necessary for the EAC to (1) require voting system manufacturers to submit information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials to report events which may effect a voting system's certification.

4. *Form Numbers:* EAC–001C, 002C and 003C.

5. *Frequency:* Voluntary Reporting—(1) *Manufacturer Registration Form:* one time when a manufacturer registers for the program, (2) *Voting System Certification Application Form:* as needed, when a manufacturer submits a voting system for testing and certification, and (3) *Field Anomaly Reporting Form:* as needed, when an election official voluntarily notifies the EAC of a witnessed voting system anomaly.

6. *Affected Public:* Business or other for-profit institutions and state and local election officials;

7. *Number of Respondents:* 94 annually;

8. *Total Annual Responses:* 99 annually;

9. *Total Annual Hours:* 119 hours, annually.

EAC is requesting OMB review and approval of this collection by November 30, 2006, with a 180-day approval

period. Written comments and recommendations will be considered from the public if received by the individuals designated below by October 31, 2006.

To obtain copies of the supporting statement, the Voting System Testing and Certification Program Manual or EAC forms referenced above, access the EAC Web site at *http://www.eac.gov* or mail your request, including your address, phone number, to Director of Voting System Certification, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, DC 20005; or fax the EAC Director of Voting System Certification at 202–566–1392.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by October 31, 2006: OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 06–8375 Filed 9–29–06; 8:45 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–142]

Appalachian Power Company, Virginia; Notice of Extension of Time To File Comments

September 26, 2006.

On September 21, 2006, the Federal Energy Regulatory Commission issued a Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests for the Smith Mountain Pumped Storage Project in the above-referenced proceeding. The notice requested that comments regarding the application be filed with the Commission by October 6, 2006. The comment period should have been 30 days from the date the notice was issued. Accordingly, the deadline for filing comments is extended to and including October 23, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16148 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–603–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Annual Fuel Adjustment

September 26, 2006.

Take notice that on September 22, 2006, CenterPoint Energy—Mississippi River Transmission Corporation (MRT), filed with the Commission its annual fuel adjustment filing pursuant to Section 22 of the General Terms and Conditions of MRT's FERC Gas Tariff, Third Revised Volume No. 1, requesting an effective date of November 1, 2006, MRT filed the following sheets:

Fifty-Ninth Revised Sheet No. 5.
Fifty-Ninth Revised Sheet No. 6.
Fifty-Sixth Revised Sheet No. 7.
Twenty-Sixth Revised Sheet No. 8.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16155 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–602–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 26, 2006.

Take notice that on September 22, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 2006:

Ninth Revised Sheet No. 17.
Ninth Revised Sheet No. 18.
Eighth Revised Sheet No. 19.
Eighth Revised Sheet No. 31.
Eighth Revised Sheet No. 32.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16154 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–549–001]

Central Kentucky Transmission Company; Notice of Tariff Filing

September 26, 2006.

Take notice that on September 22, 2006, Central Kentucky Transmission Company (Central Kentucky) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 6, with a proposed effective date of October 1, 2006.

Central Kentucky states that it is supplementing its August 31, 2006, Annual Charge Adjustment (ACA) filing to revise its ACA surcharge for fiscal year 2007. As revised, Central Kentucky's customers will not be subject to an ACA surcharge.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16151 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–608–000]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Tariff

September 26, 2006.

Take notice that on September 22, 2006, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Attachment A to the filing, to become effective October 22, 2006.

Discovery states that the above-referenced tariff sheets are being filed pursuant to the Commission's regulations to establish tariff provisions for rendering Rate Schedule FT–1 firm transportation service on Discovery's Market Expansion.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16144 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–600–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 26, 2006.

Take notice that on September 21, 2006, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Eleventh Revised Sheet No. 2, to become effective October 22, 2006, and four firm transportation service agreements (TSAs) with Texas Gas Service Company.

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 and

385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16152 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–164–008]

Equitrans, L.P.; Notice of Refund Report

September 26, 2006.

Take notice that on August 30, 2006, Equitrans L.P. (Equitrans) tendered for filing a refund report for refunds to applicable customers of amounts in excess of the settled rates as directed in the Commission's order. (*Equitrans, L.P.,* 115 FERC ¶ 61,007 (2006)).

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 October 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16149 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–1443–001]

FirstEnergy Service Company, Pennsylvania Power Company, Metropolitan Edison Company, Pennsylvania Electric Company, Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Electric Company; Notice of Shortened Comment Period

September 26, 2006.

On September 25, 2006, the Commission issued a notice in the above-captioned proceeding. *Combined Notice of Filings #1,* September 25, 2006. The comment date on the notice is Wednesday, October 11, 2006. The Commission's staff has requested a shortened comment period. By this notice, the date for filing comments is shortened to Monday, October 2, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16146 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–520–001]

Gulf South Pipeline Company, LP; Notice of Revised Cash-Out Report

September 26, 2006.

Take notice that on September 15, 2006, Gulf South Pipeline Company, LP (Gulf South) tendered for filing a revised Exhibit 3 to its annual cash-in/cash-out report (Cash Pool Report) filed on August 28, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 October 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16150 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–605–000]

Iroquois Gas Transmission System, L.P.; Notice of Filing

September 26, 2006.

Take notice that on September 22, 2006, Iroquois Gas Transmission System; L.P. (Iroquois) filed an update to the Iroquois Deferred Asset Surcharge Adjustment, pursuant to part 154 of the Commission's regulations and section 12.3 of the general terms and conditions of its FERC Gas Tariff, Iroquois herewith tenders for filing this report relating to its Deferred Asset Surcharge. Iroquois states that because there is no change in the Deferred Asset Surcharge, as shown in the calculation on the attached work papers, no tariff sheet is being submitted.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16157 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–606–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 26, 2006.

Take notice that on September 22, 2006, Northern Natural Gas Company (Northern) tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1:

Ninth Revised Sheet No. 135D
Third Revised Sheet No. 142C
Fifteenth Revised Sheet No. 144

Northern further states that copies of the filing have been provided to each of its customers and interested state commissions.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16158 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–607–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 26, 2006.

Take notice that on September 22, 2006, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of October 23, 2006:

Tenth Revised Sheet No. 286.
Fourth Revised Sheet No. 287A.
Eighth Revised Sheet No. 288.

Northern further states that copies of the filing have been provided to each of its customers and interested State Commissions.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16159 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–601–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 26, 2006.

Take notice that on September 22, 2006, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twelfth Revised Sheet No. 373 to become effective October 23, 2006.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16153 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2106–047]

Pacific Gas and Electric Company, California; ERRATA Notice

September 26, 2006.

On September 25, 2006, the Commission issued a ''Notice of Intent to File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Scoping Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests'' for the above-referenced proceeding. In paragraph ''n.'' last sentence should read:

''Any individual or entity interested in commenting on the PAD or SD1, submitting study requests, or any agency requesting cooperating status must do so by November 23, 2006.''

Magalie R. Salas,

Secretary.

[FR Doc. E6–16147 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88–391–032 and RP93–162–017]

Transcontinental Gas Pipe Line Corporation; Notice of Annual Cash-Out Filing

September 26, 2006.

Take notice that on September 22, 2006, Transcontinental Gas Pipe Line Corporation (Transco) filed its annual cash-out report and report of cashout refunds for the period August 1, 2005 through July 31, 2006. Transco states that its filing complies with the cash-out provisions in section 15 of the general terms and conditions (GT&C) of Transco's FERC Gas Tariff.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 October 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16160 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–604–000]

Transwestern Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 26, 2006.

Take notice that on September 22, 2006, Transwestern Pipeline Company, LLC (Transwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing to become effective October 23, 2006.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16156 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 25, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06–74–000.
Applicants: FPL Energy Oliver Wind, LLC.
Description: FPL Energy Oliver Wind, LLC submits its Notice of Self Certification of Exempt Wholesale Generator Status.
Filed Date: 8/23/2006.
Accession Number: 20060823–5014.
Comment Date: 5 p.m. Eastern time on Wednesday, September 13, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–2414–007.
Applicants: Lowell Cogeneration Company, Limited Partnership.
Description: Lowell Cogeneration Company Limited Partnership submits its Triennial Updated Market Analysis supporting continuation of its authorization to make sales of energy & capacity pursuant to FERC's 9/25/03 Order.
Filed Date: 08/23/2006.
Accession Number: 20060824–0081.
Comment Date: 5 p.m. Eastern time on Wednesday, September 13, 2006.

Docket Numbers: ER97–2801–013.
Applicants: PacifiCorp.
Description: PacifiCorp submits an updated market power analysis in compliance with the Commission's letter of 6/21/06; additional material submitted on 8/23/06.
Filed Date: 8/21/2006; 8/23/2006.
Accession Number: 20060823–0134.
Comment Date: 5 p.m. Eastern time on Monday, September 11, 2006.

Docket Numbers: ER98–2603–005.
Applicants: Southwood 2000, Inc.
Description: Southwood 2000, Inc. submits an amendment to its 7/7/05 Updated Market Power Analysis.
Filed Date: 8/17/2006.
Accession Number: 20060823–0056.
Comment Date: 5 p.m. Eastern time on Thursday, September 7, 2006.

Docket Numbers: ER04–925–010.
Applicants: Merrill Lynch Commodities, Inc.
Description: Merrill Lynch Commodities, Inc. submits a notice of non-material change in circumstance.
Filed Date: 8/18/2006.
Accession Number: 20060823–0055.
Comment Date: 5 p.m. Eastern time on Friday, September 8, 2006.

Docket Numbers: ER05–406–001.
Applicants: Williams Power Company, Inc.
Description: Williams Power Company, Inc. submits a Revised Refund Report, pursuant to the Commission's Order issued 3/21/06.
Filed Date: 8/23/2006.
Accession Number: 20060823–5018.
Comment Date: 5 p.m. Eastern time on Wednesday, September 13, 2006.

Docket Numbers: ER05–856–004.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Co. submits the Second Revised Service Agreement 21 for the Purchase of Electricity for Resale with the Town of Windsor.
Filed Date: 8/23/2006.
Accession Number: 20060824–0083.
Comment Date: 5 pm Eastern time on Wednesday, September 13, 2006.

Docket Numbers: ER05–1507–002.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits a compliance filing to revise Section 8.4 of its Market Administration and Control Area Services Tariff pursuant to FERC's 7/21/06 Order.
Filed Date: 8/21/2006.
Accession Number: 20060823–0057.
Comment Date: 5 p.m. Eastern time on Monday, September 11, 2006.

Docket Numbers: ER06–731–003.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits revisions to the Midwest ISO's Open Access Transmission and Energy Markets Tariff regarding the Broad Constrained Area Mitigation Provisions.
Filed Date: 8/21/2006.
Accession Number: 20060823–0058.
Comment Date: 5 p.m. Eastern time on Monday, September 11, 2006.

Docket Numbers: ER06–818–002.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Co. submits a corrected tariff sheet designation to comply with FERC's 8/7/06 Letter Order.
Filed Date: 8/22/2006.
Accession Number: 20060823–0138.
Comment Date: 5 p.m. Eastern time on Tuesday, September 12, 2006.

Docket Numbers: ER06–917–001.
Applicants: PacifiCorp.
Description: PacifiCorp submits its Sixth Revised Volume 11 Pro Forma Open Access Transmission Tariff conforming to the requirements of Order 614.
Filed Date: 8/23/2006.
Accession Number: 20060824–0021.
Comment Date: 5 p.m. Eastern time on Wednesday, September 13, 2006.

Docket Numbers: ER06–1047–002; ER06–451–006.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits a compliance filing providing for revisions to its Open Access Transmission Tariff pursuant to FERC's 7/20/06 Order.
Filed Date: 8/21/2006.
Accession Number: 20060823–0053.
Comment Date: 5 p.m. Eastern time on Monday, September 11, 2006.

Docket Numbers: ER06–1272–001.
Applicants: Reliant Energy Power Supply, LLC.
Description: Reliant Energy Power Supply, LLC submits a clean version and blacklined version of its revised tariff which was submitted on 7/21/06.
Filed Date: 8/22/2006.
Accession Number: 20060823–0137.
Comment Date: 5 p.m. Eastern time on Tuesday, September 12, 2006.

Docket Numbers: ER06–1331–001.
Applicants: CalPeak Power LLC.
Description: CalPeak Power LLC submits a limited amendment to its 8/2/06 filing to amend the language in Section 10 Change in Status etc.
Filed Date: 8/18/2006.
Accession Number: 20060823–0054.
Comment Date: 5 p.m. Eastern time on Friday, September 8, 2006.

Docket Numbers: ER06–1355–001.
Applicants: Evergreen Wind Power, LLC.
Description: Evergreen Wind Power, LLC submits an amended FERC Electric Tariff, Original Volume No. 1.
Filed Date: 8/23/2006.
Accession Number: 20060824–0082.
Comment Date: 5 p.m. Eastern time on Wednesday, September 13, 2006.

Docket Numbers: ER06–1391–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Co. submits the Power Flow Altering Device Memorandum of Understanding with Imperial Irrigation District.
Filed Date: 8/22/2006.
Accession Number: 20060823–0136.
Comment Date: 5 p.m. Eastern time on Tuesday, September 12, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E6–16265 Filed 9–29–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order and Soliciting Comments, Motions To Intervene, and Protests

September 26, 2006.

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

a. *Application Type:* Petition for Declaratory Order.
b. *Docket No.:* DI06–4–000.
c. *Date Filed:* September 11, 2006.
d. *Applicant:* Haneline Power LLC.
e. *Name of Project:* Henry River Project.
f. *Location:* The Henry River Project is located on the Henry River, Burke County, Henry River, North Carolina. The project does not occupy any tribal or Federal lands.
g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).
h. *Applicant Contact:* Douglas Allen Haneline, 3379 Amity Hill Road, Statesville, NC 28677; Telephone: (704) 450–9129; Fax: (704) 873–0936.
i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 502–8768, or E-mail: henry.ecton@ferc.gov.
j. *Deadline for filing comments and/or motions:* October 27, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at: *http://www.ferc.gov.*

Please include the docket number (DI06–4–000) on any protests, comments and/or motions filed.

k. *Description of Project:* The run-of-river project consists of: (1) An existing 35-foot-high, 220-foot-long concrete and stone dam, with 36-inch-high flashboards; (2) a reservoir with a surface area of approximately 12 acres; (3) a powerhouse containing one 375 kW generator and one 150 kW generator; (4) a 300-foot-long tailrace; and (5) appurtenant facilities. The facility is connected to an interstate grid.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to

investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, and/or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', and/or ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–16145 Filed 9–29–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project—Rate Order No. WAPA–131

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Order Extending Firm Electric Service and Transmission Service Rate Methodologies.

SUMMARY: This action is to extend the existing Parker-Davis Project (P–DP) Firm Electric Service Rate Schedule PD–F6 and the Transmission Service Rate Schedules PD–FT6, PD–FCT6, and PD–NFT6 through September 30, 2008. Without this action, the existing Firm Electric Service and Transmission Services rates will expire September 30, 2006, and no rates will be in effect for these services. These Firm Electric Service and Transmission Service Schedules contain formula rates recalculated from yearly updated financial and load data.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, or e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (Commission).

This action is to further extend the existing Parker-Davis Project Rate Order No. WAPA–75, that was originally approved for 5 years, beginning November 1, 1997, through September 30, 2002. See FERC Docket No. EF98–5041–000, 82 FERC Par. 62, 164 (March 10, 1998).

Rate Order WAPA–98, approved by the Secretary of Energy on September 13, 2002 (67 FR 60655, September 26, 2002), extended WAPA–75 through September 30, 2004. Rate Order WAPA–113, approved by the Deputy Secretary on September 2, 2004 (69 FR 55429, September 14, 2004), extended WAPA–75 through September 30, 2006.

Western is currently conducting a formal re-marketing process for the Parker-Davis Project. One of the effects of this re-marketing effort is an increase in firm electric service capacity that will be available October 1, 2008, creating a larger resource pool and making additional capacity and energy available to new contractors. Western is seeking this extension to provide adequate time to consider the effect of the additional capacity on the rates and to consider the input of the public including the additional contractors. Because the current rate methodologies contain formula rates recalculated from yearly updated financial and load data and Western seeks to involve new contractors in the rate process, Western proposes to extend the current rate schedules under 10 CFR part 903. Rate Order WAPA–75, previously extended under Rate Order No. WAPA–98 and Rate Order No. WAPA–113, will be further extended under Rate Order No. WAPA–131.

Western's existing formula Transmission Service Rate Schedules and Electric Service Rate Schedules, recalculated annually, will recover sufficient project expenses (including interest) and capital requirements through September 30, 2008.

Following review of Western's proposal within the DOE, I hereby approve Rate Order No. WAPA–131 which extends the existing P–DP Firm Electric Service and Transmission Service Rates through September 30, 2008.

Dated: September 22, 2006.

Clay Sell,

Deputy Secretary.

Department of Energy, Deputy Secretary

In the Matter of: Western Area Power Administration Rate Extension for the Parker-Davis Project Firm Electric Service and Transmission Service Rate Methodologies; Order Confirming and Approving an Extension of the Parker-Davis Project Firm Electric Service and Transmission Service Rate Methodologies

These Firm Electric Service and Transmission Service Rate

Methodologies were established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project system involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

Background

This action is to further extend the existing Parker-Davis Project Rate Order No. WAPA–75 that was originally approved for 5 years, beginning November 1, 1997, through September 30, 2002. See FERC Docket No. EF98–5041–000, 82 FERC Par. 62,164 (March 10, 1998).

Rate Order No. WAPA–98, approved by the Secretary of Energy on September 13, 2002 (67 FR 60655, September 26, 2002), extended WAPA–75 through September 30, 2004. Rate Order WAPA–113, approved by the Deputy Secretary on September 2, 2004 (69 FR 55429, September 14, 2004), extended WAPA–75 through September 30, 2006.

Discussion

Western is currently conducting a formal re-marketing process for the Parker-Davis Project, which will increase the firm electric service capacity that will be available October 1, 2008, creating a larger resource pool and making additional capacity and energy available to new contractors. Western seeks this extension to allow adequate time to consider the effect of additional firm electric service capacity on the rates and to consider the input of the public including the additional contractors. Western proposes to extend the current rate schedules to complete this analysis. On the Deputy Secretary of Energy's approval, Rate Order No. WAPA–75, as extended, will be further extended under Rate Order No. WAPA–131.

Order

In view of the above and under the authority delegated to me, I hereby extend for a period effective from October 1, 2006, through September 30, 2008, the existing Firm Electric Service Rate Schedule PD–F6, and the Transmission Service Rate Schedules PD–FT6, PD–FCT6, and PD–NFT6.

Dated: September 22, 2006.

Clay Sell,

Deputy Secretary.

[FR Doc. E6–16161 Filed 9–29–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2002–0001; FRL–8099–4]

National Pollution Prevention and Toxics Advisory Committee (NPPTAC); Notice of Public Meeting; Cancellation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of September 15, 2006 (71 FR 54480) (FRL–8093–2), EPA announced a public meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of this notice is to inform the public that the NPPTAC public meeting has been canceled. Meetings of the Committee Work Groups have also been canceled. This includes the Pollution Prevention (P2) Work Group, the Information Integration and Data Use Work Group, and the Government Accountability Office (GAO) Reports Interim Work Group meetings.

DATES: The meeting scheduled to be held on October 4, 2006, from 8:30 a.m. to 5:30 p.m., and October 5, 2006, from 10:15 a.m. to 1 p.m., has been canceled.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address:*TSCA-Hotline@epa.gov*.

For technical information contact: John Alter, (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address: *npptac.oppt@epa.gov*.

List of Subjects

Environmental protection, Chemical health and safety, NPPTAC, Pollution prevention, Toxics, Toxic chemicals.

Dated: September 28, 2006.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 06–8433 Filed 9–28–06; 1:14 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–0824; FRL–8226–7]

Board of Scientific Counselors, Executive Committee Meeting—October 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

DATES: The meeting will be held on Thursday, October 19, 2006 from 8:30 a.m. to 5 p.m., and will continue on Friday, October 20, 2006 from 9 a.m. to 12 noon. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: The meeting will be held at the Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–0824, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2006–0824.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2006–0824.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Executive Committee Meeting—October 2006 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington,

DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2006–0824.

• *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2006–0824.

Note: This is not a mailing address. 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–ORD–2006–0824. 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 information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Executive Committee—October 2006 Docket, EPA/DC, EPA West, Room B102, 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 ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via e-mail at: *kowalski.lorelei@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: Discussion of the Computational Toxicology Subcommittee draft letter report, and Rating Tool Workgroup draft proposal; ORD responses to recent BOSC reports; update on program review subcommittees for Human Health Risk Assessment, Safe Pesticides/Safe Products, Technology for Sustainability, and Homeland Security; updates on the standing Laboratory/Center Subcommittees, Human Health Mid-Cycle Review, and EPA's Science Advisory Board activities; ORD briefings; and future issues and plans. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564–3408 or *kowalski.lorelei@epa.gov.* To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 26, 2006.

Maryellen Radzikowski,

Acting Director, Office of Science Policy.

[FR Doc. E6–16195 Filed 9–29–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0076; FRL–8226–3]

Extension of Period for Objection Concerning Notice of Data Availability for EGU NO_X Annual and NO_X Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plan Trading Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to extend period for objections.

SUMMARY: EPA is extending the period for submission of objections concerning the notice of data availability (NODA) for EGU NO_X Annual and NO_X Ozone Season Allocations for the Clean Air Interstate Rule Federal Implementation Plan Trading Programs (CAIR FIP) published on August 4, 2006 for an additional 90 days with regard to cogeneration units combusting biomass (biomass cogeneration units). The period had previously been extended to October 5, 2006 for all objections and will be further extended to January 3, 2007 only for objections concerning biomass cogeneration units. Certain biomass cogeneration unit owners and operators requested the additional time to submit objections because of difficulties in collection of information relating to the application of efficiency standards for cogeneration units (as defined in the CAIR FIP) to biomass cogeneration units. For all other objections, the deadline remains October 5, 2006.

DATES: The EPA is establishing a period ending on January 3, 2007 only for objections (including data) related to biomass cogeneration units. Objections must be postmarked by the last day of the period for objection and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible).

ADDRESSES: Submit your objections, identified by Docket Number OAR–2004–0076 by one of the following methods:

A. Federal Rulemaking Portal: *http://www.regulations.gov.* Today's action is not a rulemaking but you may use the Federal Rulemaking Portal to submit objections to the NODA. To submit

objections, follow the on-line instructions for submitting comments.

B. *Mail:* Air Docket, ATTN: Docket Number OAR—2004–0076, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

C. E-mail: A–AND–R–Docket@epa.gov.

D. *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., Room B102, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's action and technical questions concerning heat input or fuel data should be addressed to Brian Fisher, USEPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Ave., Mail Code 6204 J, Washington, DC 20460. Telephone at (202) 343–9633, e-mail at *fisher.brian@epa.gov.*

If mailing by courier, address package to Brian Fisher, 1310 L St., NW., RM # 713G, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: *Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, 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 Docket is (202) 566–1742.

Extension of Period for Objections

In the August 4, 2006 NODA (71 FR 44283), EPA provided notice that it had placed in the CAIR FIP docket allocation tables for EGU NO_X annual and EGU NO_X ozone season allocations for control periods 2009–2014. The allocation tables also included inventories of heat input and inventories of potentially exempt units. In addition, EPA also placed in the docket a Technical Support Document describing the allocation table data fields.

The EPA originally provided a 30-day period for the unit owners, unit operators, and the public to submit objections regarding individual units' treatment as potentially covered or not covered by CAIR and, for units treated as potential CAIR units, the data used in the allocation calculations and the allocations resulting from such calculations. In response to a request from the American Forest and Paper Association, EPA extended the period for all objections an additional 30 days to October 5, 2006.

In requesting an additional extension of the period, certain biomass cogeneration unit owners have noted the unique nature of the fuels utilized by biomass cogeneration units and the difficulties encountered in collecting data necessary to apply the efficiency standard to this type of cogeneration unit. In light of these circumstances, the EPA is extending the period an additional 90 days only for objections (including data) related to any biomass cogeneration units. For all other objections, the deadline will remain October 5, 2006. EPA believes the addition of 90 days will provide the Agency time to evaluate and, if appropriate, address the concerns raised about application of the efficiency standard to biomass cogeneration units. Since this process may affect the amount and type of data that may need to be submitted concerning biomass cogeneration units, EPA is extending the period for objections related to this type of cogeneration unit.

Dated: September 26, 2006.

Edward Callahan,

Acting Director, Office of Air and Radiation.

[FR Doc. E6–16193 Filed 9–29–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 06–121]

2006 Quadrennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: The Federal Communications Commission will hold a field hearing regarding media ownership in Los Angeles, California on October 3, 2006. The purpose of the hearing is to fully involve the public in the process of the 2006 Quadrennial Broadcast Media Ownership Review that the Commission is currently conducting.

DATES: Part One of the hearing will be held on Tuesday, October 3, 2006, from 1 p.m.–4:30 p.m. Part Two of the hearing will be held on Tuesday, October 3, 2006, from 6:30 p.m.–10 p.m.

ADDRESSES: Part One of the hearing will be held at the University of Southern California (USC) in the Embassy Room of the Davidson Conference Center, 3415 South Figueroa Street, Los Angeles, CA 90089. Part Two of the hearing will be held at El Segundo High School, 640 Main Street, El Segundo, CA 90245.

FOR FURTHER INFORMATION CONTACT: Rebecca Fisher, at 202–418–2359, or David Fiske, at 202–418–0513.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission will hold a field hearing regarding media ownership in Los Angeles, California on October 3, 2006. Part One of the hearing will be held on Tuesday, October 3, 2006, from 1 p.m.–4:30 p.m at the University of Southern California. Part Two of the hearing will be held on Tuesday, October 3, 2006, from 6:30 p.m.–10 p.m at El Segundo High School. The Commission appreciates the invitations from these two communities in the Los Angeles area. The purpose of the hearing is to fully involve the public in the process of the 2006 Quadrennial Broadcast Media Ownership Review that the Commission is currently conducting. The hearing is open to the public, and seating will be available on a first-come, first-served basis. This hearing is the first in a series of media ownership hearings the Commission intends to hold across the country. A final roster of panelists will be released prior to the hearing. The hearing format will enable members of the public to participate via ''open microphone.'' The hearing format is as follows:

USC

1 p.m. Welcome/Opening Remarks

1:30 p.m. Panel Discussion—Creative Community/Independent Programming
2:30 p.m. Public Comments
4:15 p.m. Wrap-Up
4:30 p.m. Temporary Adjournment

El Segundo High School

6:30 p.m. Opening Remarks
6:45 p.m. Panel Discussion—Market Overview/LA Case Study
7:45 p.m. Public Comments
9:45 p.m. Wrap-Up
10 p.m. Adjournment

Open captioning and sign language interpreters will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation needed, and include a way we can contact you if we need more information. Please make your request as early as possible. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

A live audio cast of the hearing will be available at the FCC's Web site at *http://www.fcc.gov* on a first-come, first-served basis. Live video Web cast, if available, will be announced prior to the hearing. The public may also file comments or other documents with the Commission and should reference docket number 06–121. Filing instructions are provided at *http://www.fcc.gov/ownership/comments.html.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–16206 Filed 9–29–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. InsCorp., Inc., Nashville, Tennessee; to acquire an additional 50 percent for a total of 100 percent, of the voting shares of Insurors Bank of Tennessee, Nashville, Tennessee.

Board of Governors of the Federal Reserve System, September 27, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–16174 Filed 9–29–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. BBOK Bancshares, Inc., Wichita, Kansas; to acquire 1st St. Louis Securities, St. Louis, Missouri, and thereby engage in securities brokerage, private placement services, underwriting and dealing in government obligations, and money market instruments, pursuant to sections 225.28(b)(7)(i), (b)(7)(iii), and (b)(8)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, September 27, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–16175 Filed 9–29–06; 8:45 am]

BILLING CODE 6210–01–S

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Notice of Intent To Extend an Information Collection

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Notice and request for comments.

SUMMARY: 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 Harry S. Truman Scholarship Foundation [Foundation] will publish periodic summaries of proposed projects.

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.

DATES: Written comments on this notice must be received by November 28, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Frederick G. Slabach, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006; telephone 202–395–4831; or send e-mail to *office@truman.gov.* You also may obtain a copy of the data collection instrument and instructions from Mr. Slabach.

SUPPLEMENTARY INFORMATION:

Title of Collection: Truman Scholarship Application.

OMB Approval Number: 3200–0004.

Expiration Date of Approval: 08/06.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The Foundation has been providing scholarships since 1977 in compliance with Public Law 93–642. This data collection instrument is used to collect essential information to enable the Truman Scholarship Finalists Selection Committee to determine whom to invite to interviews. It is used by Regional Review Panels as essential background information on the Finalists whom they interview and ultimately the Truman Scholars they select. A total response rate of 100% was provided by the 598 candidates who applied for Year 2006 Truman Scholarships.

Estimate of Burden: The Foundation estimates that, on average, 50 hours per respondent will be required to complete the application, for a total of 29,900 hours for all respondents.

Respondents: Individuals.

Estimated Number of Responses: 600.

Estimated Total Annual Burden on Respondents: 30,000 hours.

Dated: September 25, 2006.

Frederick G. Slabach,

Executive Secretary.

[FR Doc. E6–16188 Filed 9–29–06; 8:45 am]

BILLING CODE 6820–AD–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Training and Capacity-Building for the Detection and Monitoring of, and Response to, Emerging Infectious Diseases in the Asia-Pacific Region

AGENCY: Office of Public Health Emergency Preparedness and the Office of Global Health Affairs, Office of the Secretary, DHHS.

ACTION: Notice.

Announcement Type: Single Eligibility—FY 2006 Initial Announcement.

Funding Opportunity Number: OGHA 05–019.

GSA Catalog of Federal Domestic Assistance: 93.283.

DATES: October 2, 2006.

Application Availability.

October 10, 2006.

Optional Letter of Intent due by 5 p.m. ET.

October 17, 2006—Applications due by 5 p.m. ET

October 27, 2006—Award date.

SUMMARY: The Office of Public Health Emergency Preparedness (OPHEP) and the Office of Global Health Affairs (OGHA) within the U.S. Department of Health and Human Services (HHS) announces that up to $2,100,000 in fiscal year (FY) 2006 funds is available for a cooperative agreement to provide support to develop a cadre of in-country trainers who can improve their ongoing hospital infection-control programs to achieve better adherence by health-care workers to infection-control and case-management principles and practices.

This effort is an undertaking by the Department of Health and Human Services (HHS). The project will be approved for up to a program period of three (3) years with a budget period of one-year for a total of $2,100,000.

Under certain circumstances especially in support of HHS International efforts, OGHA and OPHEP are required to collaborate on programs, issues and initiatives regarding international public health (i.e. Avian Influenza, disease surveillance, etc.). Normally, OGHA is often tasked as to devise, award, and administer international Federal assistance actions (grants, cooperative agreements, IAA's, etc.). When emergency preparedness issues are to be addressed as part of the program plan, OGHA partners with OPHEP to provide assistance in ensuring risks mitigation and emergency preparedness elements are included.

The Regional Emerging Diseases Intervention (REDI) Center in Singapore will design the program around mentorship principles so trainers can gain advice and support for their efforts in teaching infection-control and case-management practices in local languages.

While there is no current pandemic influenza outbreak, there is still reason to be concerned about the spread of the H5N1 virus from Southeast Asia to countries in Europe, the Middle East, and Africa. In the last century, three influenza pandemics have affected the United States, and viruses from birds contributed to all of them. Medical practitioners have also discovered several other, new, avian viruses human beings can transmit among one another. Although the H5N1 virus has primarily infected domesticated birds and long-range migratory birds, the virus has demonstrated the ability to infect and produce fatal illness in humans. Influenza experts believe an avian virus could become efficiently transmissible between humans, and result in a worldwide outbreak, which would overwhelm health and medical capabilities. Furthermore, an influenza pandemic could result in hundreds of thousands of deaths, millions of hospitalizations, and hundreds of billions of dollars in direct costs in the United States alone.

On November 1, 2005, President Bush announced the *National Strategy on Pandemic Influenza*, and the following day Secretary Michael O. Leavitt released the *HHS Pandemic Influenza Plan.* Building on these efforts, President Bush released the *Implementation Plan for the National Strategy for Pandemic Influenza* on May 3, 2006, which describes more than 300 critical actions to address the threat of pandemic influenza. All relevant Federal Departments and agencies must take steps to address the threat of avian and pandemic influenza. Drawing on the combined efforts of Government officials and the public-health, medical, veterinary, and law-enforcement communities, as well as the private sector, this strategy is designed to meet three critical goals: Detecting human or animal outbreaks that occur anywhere in the world; protecting the American people by stockpiling vaccines and antiviral drugs, while improving the capacity to produce new vaccines; and preparing to respond at the Federal, State, and local levels in the event an avian or pandemic influenza reaches the United States. HHS technical expertise in applied epidemiology, rapid laboratory diagnostics, infection control, virology research, vaccine delivery, and other areas is a critical component of both the domestic and the international

response to the threat of pandemic influenza.

One of the primary objectives of both the *National Strategy* and the *HHS Pandemic Plan* is to leverage global partnerships to increase preparedness and response capabilities around the world with the intent of stopping, slowing, or otherwise limiting the spread of a pandemic to the United States.[1] The U.S. cannot mount an effective response to an influenza pandemic without effective worldwide partnerships. As such, we are working bilaterally with partner countries, with multilateral organizations, and with private, non-profit organizations, to amplify our efforts. Our international effort to contain and mitigate the effects of an outbreak of pandemic influenza is a central component of our overall strategy. In many ways, the character and quality of the U.S. response and that of our international partners could play a determining role in the severity of a pandemic. Pillars Two and Three of the *National Strategy* set out clear goals for ensuring the rapid reporting of outbreaks and containing outbreaks beyond the borders of the U.S. by taking the following actions:

Working through the International Partnership on Avian and Pandemic Influenza, as well as through other political and diplomatic channels, such as the United Nations and the Asia-Pacific Economic Cooperation Forum, to ensure transparency, scientific cooperation, and rapid reporting of avian and human influenza cases;

Supporting the development of proper scientific and epidemiological expertise in affected regions to ensure early recognition of changes in the pattern of avian or human influenza outbreaks;

Supporting the development and sustainment of sufficient host-country laboratory capacities and diagnostic reagents in affected regions, to provide rapid confirmation of cases of influenza in animals and humans;

Working through the International Partnership to develop a coalition of strong partners to coordinate actions to limit the spread of an influenza with pandemic potential beyond the location where it is first located; and,

Providing guidance to all levels of Government in affected nations on the range of options for infection control and containment.

The International Partnership on Avian and Pandemic Influenza, launched by President Bush at the United Nations (UN) General Assembly in September 2005, stands in support of multinational organizations and National Governments. Members of the Partnership have agreed the following 10 principles will guide their efforts:

1. International cooperation to protect the lives and health of our people;
2. Timely, sustained, high-level, global political leadership to combat avian and pandemic influenza;
3. Transparency in reporting of influenza cases in humans and in animals caused by viruses strains that have pandemic potential, to increase understanding and preparedness and especially to ensure rapid and timely response to potential outbreaks;
4. Immediate sharing of epidemiological data and samples with the World Health Organization (WHO) and the international community to detect and characterize the nature and evolution of any outbreaks as quickly as possible by using, where appropriate, existing networks and mechanisms;
5. Rapid reaction to address the first signs of accelerated transmission of H5N1 and other highly pathogenic influenza strains, that appropriate international and national resources can be brought to bear;
6. Prevent and contain an incipient epidemic through capacity-building and in-country collaboration with international partners;
7. Work in a manner complementary to and supportive of expanded cooperation with and appropriate support of key multilateral organizations (including the WHO, the UN Food and Agriculture Organization and the World Organization for Animal Health);
8. Timely coordination of bilateral and multilateral resource allocations; dedication of domestic resources (human and financial); improvements in public awareness; and development of economic and trade contingency plans;
9. Increased coordination and harmonization of preparedness, prevention, response, and containment activities among nations, complementing domestics, and regional preparedness initiatives, and encouraging (where appropriate) the development of strategic regional initiatives; and,
10. Actions based on the best available science.

Through the Partnership and other bilateral and multilateral initiatives, we will promote these principles and support the development of an international capacity to prepare for, detect, and respond to an influenza pandemic.

An important international resource for minimizing the global impact of avian-influenza and human-influenza pandemics is the REDI Center. Announced in 2003 by President Bush and Singaporean Prime Minister Goh under the auspices of the Asia-Pacific Economic Cooperation forum, the REDI Center is an international organization based in Singapore and jointly supported by HHS and the Singaporean Ministry of Health. The primary goal of the REDI Center is to establish a regional outpost for the United States to improve the detection of and the response to new and emerging infectious diseases threats by strengthening regional capabilities. These goals are directly related to the goals of the President's *National Strategy* and the *HHS Pandemic Plan.* With funding from this grant, the REDI Center will help extend the perimeter of defense for emerging infectious diseases, such as the H5N1 strain of avian influenza; increase international collaborative research; and translate the findings of research into improved public health in the Asia-Pacific region.

In direct support of the President's *National Strategy*, this grant will finance the REDI Center. Funding support for activities supported by the REDI Center is fully consistent with the international component of the Fiscal Year 2006 Pandemic Influenza Plan. One of the overarching goals of the *National Strategy* and the *HHS Pandemic Plan* is to stop, slow or limit the spread of disease. Early in a pandemic, before a vaccine is available, the ability to limit transmission and delay the spread of a pandemic will rely primarily on the appropriate and thorough application of infection-control measures in health-care facilities, the work place, and community and among individuals at home. The education and training of health-care workers in infection-control measures is imperative for both their protection and for limiting the transmission of virus.

The *Implementation Plan* directs HHS to educate health-care workers in priority countries, and to provide guidance on the range of options for infection-control and containment. Current HHS infection-control guidance for influenza is based on our knowledge of the routes of influenza transmission, the pathogenesis of the virus, and the effects of influenza-control measures used for past pandemics and inter-pandemic periods. Infection-control precautions during patient care in health-care settings (e.g., hospitals, nursing homes, outpatient offices, emergency transport vehicles) also apply to health-care personnel who go into the homes of patients.

Funding from this grant will focus on hospital infection-control training in Indonesia. As of August 22, 2006, 58

[1] National Strategy for Academic Influenza, p. 2.

cases of human infection with the H5N1 avian influenza virus, of which 39 have been fatal. The H5N1 avian influenza virus is now endemic in poultry populations throughout Indonesia, and there continues to be close contact between humans and poultry across that country. A portion of the available funding will support an innovative, integrated animal and human disease-control and surveillance pilot project in Tangerang, jointly supported by the Governments of Singapore, Indonesia, and the United States.

The National Strategy for Pandemic Influenza and the *HHS Pandemic Influenza Strategic* Plan are available at the following Internet address: *http://www.pandemicflu.gov.*

I. Funding Opportunity Description

Authority: Sections 301(a) and 307 of the Public Health Service Act (42 U.S.C. 241(a) and 42 U.S.C. 2421).

Purpose of the Agreement

Enhance cooperation between the United States, Singapore, and Indonesia, to support and increase influenza-preparedness;

Provide assistance to the REDI Center for the expansion of in-country training programs in local languages in infection control and case management in Indonesia;

Institute infection-control procedures in the approximately 40 infectious disease hospitals throughout Indonesia;

Develop a cadre of Indonesian trainers who can train additional health-care workers, by designing and implementing courses in local languages that follow a train-the-trainer model;

Provide support for a trilateral collaboration between the United States, Singapore, and Indonesia, on an innovative and integrated disease-control and surveillance pilot program in the Tangerang District of Indonesia.

The program will encourage participants to assess the condition of their designated health-care facilities to handle large volumes of influenza patients and assess the effectiveness of their current training efforts and quality-assurance systems in hospital infection control. The goal is to develop a cadre of Indonesian trainers who can improve their ongoing hospital infection-control programs to achieve better adherence by health-care workers to infection-control and case-management principles and practices. The REDI Center will design the program around mentorship principles so trainers can gain advice and support for their efforts in teaching infection-control and case-management practices in local languages.

Activities: Awardee activities for this program are as follows:

Identify infectious-disease hospitals likely to receive influenza patients in Indonesia, and conduct needs assessments on current hospital infection-control and influenza case-management practices.

Provide technical support and training for staff who are implementing in-country reviews of current hospital infection-control and influenza case-management practices in Indonesia.

Develop and implement local-language training curricula and workshops by using a train-the-trainer model. Serve as an ongoing technical resource and mentor for trainers and health-care workers in Indonesia.

Develop and implement demonstration projects and table-top exercises to complement classroom teaching.

Providing support to epidemiological investigations and case management following confirmed human or animal influenza cases in Indonesia.

Measurable outcomes of the program will be in alignment with the President's *National Strategy* and the principles of the International Partnership on Avian and Pandemic Influenza, and one (or more) of the following performance goal(s) for HHS pursuant to the President's initiative on pandemic-influenza preparedness:

- To detect outbreaks in the Asia/Pacific region before they spread to the United States and around the world;
- To educate health-care workers in priority countries, and provide guidance on the range of options for infection-control and containment.
- To take immediate steps to ensure early warning of an avian influenza outbreak among animals or humans in affected regions; and
- To strengthen a new international partnership on avian influenza.

II. Award Information

The administrative and funding instrument for this program will be the cooperative agreement, in which HHS/OGHA will have scientific and/or programmatic involvement is anticipated during the performance of the project. Under the cooperative agreement, HHS/OGHA will support and/or stimulate activities of the awardee by working with it in a non-directive partnership role. HHS staff is substantially involved in the program activities, above and beyond routine monitoring. Through this cooperative agreement, HHS will collaborate in an advisory capacity with the award recipient, especially during the development and implementation of a mutually agreed-upon work plan. HHS will actively participate in periodic progress reviews and in a final evaluation of the program.

Approximately $2,100,000 in FY 2006 funds is available to support this agreement under the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 which provides funds to combat a potential influenza pandemic both domestically and internationally.

The anticipated start date is October 27, 2006. There will only be one (1), single award made from this announcement. The program period is three (3) years for this agreement and the budget period is for 12 months.

Although the financial plans of HHS/OGHA provide for this program, the award pursuant to this Request for Applications (RFA) is contingent upon the availability of funds for this purpose.

The award recipient must comply with all HHS management requirements for meeting progress against milestones and for financial reporting for this cooperative agreement. (Please see HHS Activities and Program Evaluation sections below.)

HHS/OGHA activities for this program are as follows:

- Organize an orientation meeting with the award recipient after the award is made to brief it on applicable U.S. Government expectations, regulations, policies and key management requirements, as well as report formats and contents.
- Review and approve the award recipient's annual work plan and detailed budget.
- Review and approve the award recipient's monitoring-and-evaluation plan.
- Conference on a monthly basis with the award recipient to assess monthly expenditures in relation to the approved work plan, and modify plans as necessary.
- Meet on an annual basis with the award recipient to review its annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for the subsequent year.
- Assure experienced HHS or other subject-matter experts from other relevant U.S. Government Departments and agencies will participate in the planning, development, implementation, and evaluation of all phases of this project.
- Assist in establishing and maintaining U.S. Government, Singaporean and Indonesian

Governments, and non-governmental organizations (NGOs) contracts and agreements necessary to carry out the program.

Program Evaluation Criteria: The application must have a comprehensive evaluation plan consistent with the scope, stated goals and objectives and funding level of the project. The evaluation plan should include both a process evaluation to track the implementation of project activities and outcome evaluation criteria.

In addition to conducting internal evaluations, successful applicants must be prepared to participate in external evaluations supported by Singaporean and Indonesian Governments and HHS.

In addition to routine communications with the Ministry of Health of Singapore and HHS within 30 days following the end of each quarter, the grantee will submit a written quarterly performance and financial status report of no more than ten pages in length to the Ministry of Health and HHS. At a minimum, quarterly performance reports will include the following:

- A concise summary of the most significant achievements and problems encountered during the reporting period, e.g. a comparison of work progress with objectives established for the quarter against the award recipient's implementation schedule. Where the awardee did not meet objectives were not met, the report must include a statement of cause and a summary of corrective actions.
- Specific action(s) HHS and/or the Singaporean and/or Indonesian Governments need to undertake to alleviate obstacles to progress.
- Other pertinent information that will permit oversight and evaluation of project operations.

Within 90 days following the end of the project period the awardee must submit a final report that contain all required information and data to HHS and the Singaporean Ministry of Health. At minimum, the report will contain the following:

- A summary of the major activities supported under the grant; and the major accomplishments that resulted from activities to improve performance.
- An analysis of the project, based on the challenges described in the ''Background'' Section of the RFA performed prior to or during the project period, including a description of the specific objectives stated in the grant application and the accomplishments and failures that resulted from activities during the grant agreement period. Awardees should place emphasis on indicators and measures of operational efficiency and effectiveness.

III. Eligibility Information

1. *Eligible Applicants:* This is a single-source, cooperative agreement with the Regional Emerging Diseases Intervention (REDI) Center for approximately a total of $2,100,000 in FY 2006 funds for a project period of three years with the anticipated start date of October 27, 2006. The REDI Center is a joint venture by the United States and the Republic of Singapore, announced under the auspices of the Asia-Pacific Economic Cooperation forum and incorporated in Singapore as an International Organization. Senior political and scientific leadership in the United States and Singapore, the World Health Organization, countries in the Asia-Pacific region, and other partners support the REDI center's objectives and mission. The REDI Center is specifically designed to serve as a base of training for regional public-health officials, researchers, clinicians and other health professionals, with an emphasis on the surveillance of and rapid response to emerging disease threats, such as a human pandemic influenza.

There is no other organization in the Asia-Pacific region with the REDI Center's unique ability to serve as a regional center of excellence for influenza-related training in public health, biomedical research, and public-health emergency preparedness. The REDI Center is already working to catalyze regional collaboration in research into and surveillance of infectious diseases, including the H5N1 strain of avian influenza and other diseases directly relevant to the security of the United States and the Asia-Pacific region. The REDI Center is uniquely positioned to leverage existing networks, training infrastructure, and scientific expertise for influenza preparedness and response activities.

The REDI Center has and will continue to carry out activities in Southeast Asia of high relevance to the U.S. Government's planning and preparedness for a potential human influenza pandemic. The REDI Center is organizing in-country training of hospital workers throughout Southeast Asia in infection control and case management of influenza, has organized training courses in infectious disease epidemiology and in public-health emergency preparedness for trainees from throughout the region, and has as facilitated international research collaborations in influenza and related illnesses. The REDI Center has demonstrated experience in organizing committees of world-renowned infectious-disease experts from HHS, Singaporean centers of excellence, and other leading public-health and medical-research institutions.

2. *Cost-Sharing or Matching:* Although cost-sharing, matching funds, and cost participation are not a requirement of this agreement, preference may go to organizations that can leverage additional funds to contribute to program goals. If applicants receive funding from other sources to underwrite the same or similar activities, or anticipate receiving such funding in the next 12 months, they must detail how the disparate streams of financing complement each other.

3. *Other—(If Applicable):* If an applicant requests a funding amount greater than the ceiling of the award range, HHS will consider the application non-responsive, and it will not enter into the review process. HHS will notify the applicant that the application did not meet the submission requirements.

IV. Application and Submission Information

1. *Address to Request Application Package:*

This Cooperative Agreement project uses the Application Form HHS/OPHS–1, Revised 8/2004, enclosed in the application packet. Many different programs funded through the HHS Public Health Service (PHS) use this generic form. Some parts of it are not required; applicants must fill out other sections in a fashion specific to the program. Instructions for filling out HHS OPHS–1, Revised 8/2004 will accompany the application packet. Applicants may also obtain these forms by downloading them from the following Internet address: *https://egrants.osophs.dhhs.gov* and clicking on Grant Announcements; from *http://www.grants.gov/;* or by writing to Ms. Karen Campbell, Director, Office of Grants Management, Office of Public Health and Science, U.S. Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; or contact the HHS/OPHS/Office of Grants Management, at (240) 453–8822. Please specify the HHS/OGHA program(s) for which you are requesting an application kit.

ADDRESSES: Application kits may be requested from, and submit to: Ms. Karen Campbell, Director, Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852.

2. *Content and Form of Application Submission:*

Application Materials:

A separate budget page is required for each budget year. Applicant must submit with their proposal a line-item budget (SF 424A) with coinciding justification to support each of the budget years. These forms will represent the full project period of Federal assistance requested. HHS/OGHA will reject proposals submitted without a budget and justification for each budget year requested in the application.

All applicants must include in their applications by a Project Abstract, submitted on a 3.5-inch floppy disk. The abstract must be typed, single-spaced, and not exceed two pages. Reviewers and staff will refer frequently to the information contained in the abstract, and therefore it should contain substantive information about the proposed projects in summary form. A list of suggested keywords and a format sheet for your use in preparing the abstract will accompany the application packet.

All applicants must include a Project Narrative in their grant applications. Format requirements are the same as for the ''Project Abstract'' Section; margins should be one-inch at the top and one-inch at the bottom and both sides; and typeset must be no smaller than 12 cpi, unreduced. Applicants should type biographical sketches either on the appropriate form or on plain paper and they should not exceed two pages; list only with publications directly relevant to this project.

Application Format Requirements

If an applicant is applying on paper, the entire application may not exceed 80 pages in length, including the abstract, project and budget narratives, face page, attachments, any appendices and letters of commitment and support. Applicants must number pages consecutively.

a. Number of Copies

If submitting in hard-copy, please submit one (1) original and two (2) unbound copies of the application. Please do not bind or staple the application. Application must be single-sided.

b. Font

Please use an easily readable serif typeface, such as Times Roman, Courier, or CG Times. Applicants must submit the text and table portions of the application in not less than 12-point and 1.0 line spacing. HHS/OGHA will return applications that do not adhere to 12-point font requirements.

c. Paper Size and Margins

For scanning purposes, please submit the application on 8½ x 11 white paper. Margins must be at least one (1) inch at the top, bottom, left and right of the paper. Please left-align text.

d. Numbering

Please number the pages of the application sequentially from page one (face page) to the end of the application, including charts, figures, tables, and appendices.

e. Names

Please include the name of the applicant on each page.

f. Section Headings

Please put all section headings flush left in bold type.

Application Format: An application for funding must consist of the following documents, in the following order:

i. Application Face Page. HHS/PHS Application Form HHS/OPHS–1, provided with the application package. Prepare this page according to instructions provided in the form itself.

DUNS Number

An applicant organization must have a Data Universal Numbering System (DUNS) number to apply for a grant from the Federal Government. The DUNS number is a unique, nine-character identification number provided by the commercial company Dun and Bradstreet. There is no charge to obtain a DUNS number. Information about obtaining a DUNS number is available at the following Internet address: *https://www.dnb.com/product/eupdate/requestOptions.html* or by calling 1–866–705–5711. Please include the DUNS number next to the Office of Management and Budget (OMB) Approval Number on the application face page. HHS/OGHA will not review an application that does not have a DUNS number.

Additionally, the applicant organization must register with the Federal Government's Central Contractor Registry (CCR) to do electronic business with the Federal Government. Information about registering with the CCR is available at the following Internet address: *http://www.hrsa.gov/grants/ccr.htm*.

Finally, applicants that are applying electronically through Grants.gov must register with the Credential Provider for Grants.gov. Information about this requirement is available at the following Internet address: *http://www.grants.gov/CredentialProvider*.

Applicants that are applying electronically through the HHS/OPHS E-Grants System must register with the provider. Information about this requirement is available at the following Internet address: *https://egrants.osophs.dhhs.gov*.

ii. Table of Contents. Provide a Table of Contents for the remainder of the application (including appendices), with page numbers.

iii. Application Checklist. Application Form HHS/OPHS–1, provided with the application package.

iv. Budget. Application Form HHS/OPHS–1, provided with the application package.

v. Budget Justification. Applicants must enter the amount of financial support (direct costs) they are requesting from the Federal granting agency for the first year on the Face Sheet of Application Form HHS/PHS 5161–1, Line 15a. The application should include funds for electronic-mail capability, unless access to the Internet is already available. The amount of financial support (direct costs) entered on the SF 424 is the amount an applicant is requesting from the Federal granting agency for the project year.

Personnel Costs: Applicants should explain their personnel costs by listing each staff member supported from Federal funds, name (if possible), position title, percent full-time equivalency, annual salary, and the exact amount requested.

Fringe Benefits: List the components that comprise the fringe benefit rate, for example, health insurance, taxes, unemployment insurance, life insurance, retirement plan, and tuition reimbursement. The fringe benefits should be directly proportional to that portion of personnel costs allocated for the project.

Travel: Applicants must list travel costs according to local and long-distance travel. For local travel, the applicants should outline the mileage rate, number of miles, reason for the travel and the staff member/consumers who will be completing the travel. The budget should also reflect the travel expenses associated with participating in meetings and other proposed training or workshops.

Equipment: Applicants must list equipment costs, and provide justification for the need of the equipment to carry out the program's goals. Applicants must provide an extensive justification and a detailed status of current equipment when they request funds for the purchase of computers and furniture items.

Supplies: Applicants must list the items the project will use. In this

category, separate office supplies from medical and educational purchases. ''Office supplies'' could include paper, pencils, and the like; ''medical supplies'' are syringes, blood tubes, plastic gloves, etc., and ''educational supplies'' can be pamphlets and educational videotapes. Applicants must list these categories separately.

Subcontracts: To the extent possible, applicants should standardize all subcontract budgets and justifications, and should present contract budgets by using the same object-class categories contained in the Standard Form 424A. Applicants must provide a clear explanation as to the purpose of each contract, how organization estimated the costs, and the specific contract deliverables.

Other: Applicants must put all costs that do not fit into any other category into this category, and provide an explanation of each cost in this category. In some cases, grantee rent, utilities and insurance fall under this category if they are not included in an approved indirect cost rate.)

vi. Staffing Plan and Personnel Requirements. Applicants must present a staffing plan, and provide a justification for the plan that includes education and experience qualifications and the rationale for the amount of time being requested for each staff position. Applicants must include in Appendix B position descriptions that include the roles, responsibilities, and qualifications of proposed project staff. Applicants must include in Appendix C copies of biographical sketches for any key employed personnel that will be assigned to work on the proposed project.

vii. Project Abstract. Applicants must provide a summary of the application. Because HHS/OGHA often distributes the abstract to provide information to the American public and to the U.S. Congress, applicants should prepare this so it is clear, accurate, concise, and without reference to other parts of the application. It must include a brief description of the proposed grant project, including the needs addressed, the proposed work, and the population group(s) served.

Applicants must place the following at the top of the abstract:

- Project Title;
- Applicant Name;
- Address;
- Contact Phone Numbers (Voice, Fax);
- E-Mail Address; and
- Web Site Address, if applicable

The project abstract must be single-spaced and limited to two pages in length.

viii. Program Narrative. This section provides a comprehensive framework and description of all aspects of the proposed program. It should be succinct, self-explanatory and well-organized, so reviewers can understand the proposed project.

Applicants should use the following section headers for the Narrative:

- Introduction

This section should briefly describe the purpose of the proposed project.

- Work Plan

Applicants should describe the activities or steps to achieve each of the activities proposed in the methodology section and use a time line that includes each activity and identifies responsible staff.

- Resolution of Challenges

Applicants should discuss likely challenges in designing and implementing the activities described in the Work Plan, and approaches to resolve such challenges.

- Evaluation and Technical Support Capacity

Applicants should describe their current experience, skills, and knowledge, including individuals on staff, materials published, and previous work of a similar nature.

- Organizational Information

Applicants should provide information on their current mission and structure, scope of current activities, and an organizational chart, and describe how these all contribute to the ability of the organization to conduct the program requirements and meet program expectations.

ix. Appendices. Applicants must provide the following items to complete the content of their application(s). Please note that these are supplementary in nature, and are not a continuation of the project narrative. Applicants should label each appendix clearly.

(1) *Appendix A:* Tables, Charts, etc.

To give further details about the proposal.

(2) *Appendix B:* Job Descriptions for Key Personnel

Applicants should keep each to one page in length as much as possible. Item 6 in the Program Narrative Section of the HHS/PHS 5161–1 Form provides some guidance on items to include in a job description.

(3) *Appendix C:* Biographical Sketches of Key Personnel

Applicants should include biographical sketches for persons who are occupying the key positions described in Appendix B, not to exceed two pages in length. In the event an applicant includes a biographical sketch for an identified individual who is not yet hired, it must include a letter of commitment from that person with the biographical sketch.

(4) *Appendix D:* Letters of Agreement and/or Description(s) of Proposed/Existing Contracts (project specific). Applicants must provide any documents that describe working relationships between the applicant agency and other agencies and programs cited in the proposal. Documents that confirm actual or pending contractual agreements should clearly describe the roles of the subcontractors and any deliverable. Letters of agreement must be dated.

(5) *Appendix E:* Organizational Chart for the Project. Applicants must provide a one-page figure that depicts the organizational structure of the project, including subcontractors and other significant collaborators.

(6) *Appendix F:* Other Relevant Documents. Applicants should include here any other documents relevant to the application, including letters of support. Letters of support must be dated.

3. *Submission Dates and Times:* Application Submission.

HHS/OPHS provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the HHS/OPHS Office of Grants Management to confirm receipt of applications submitted by using any of these mechanisms. The HHS/OPHS Office of Grants Management will not accept for review applications submitted after the deadlines described below. HHS will not accept for review applications that do not conform to the requirements of the grant announcement and will return them to the applicant.

Applicants may only submit electronically via the electronic submission mechanisms specified below. HHS will accept for review any applications submitted via any other means of electronic communication, including facsimile or electronic mail. While HHS will accept applications in hard copy, we encourage the use of the electronic application submission capabilities provided by the HHS/OPHS eGrants system or the *Grants.gov* Web site Portal.

Applicants must submit electronic grant application submissions no later than 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement using one of the electronic submission mechanisms specified below. The HHS/OPHS Office of Grants Management must receive all required hardcopy original signatures and mail-in items no

later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement.

HHS will not consider applications valid until the HHS/OPHS Office of Grants Management has received all electronic application components, hard-copy original signatures, and mail-in items according to the deadlines specified above. HHS will consider application submissions that do not adhere to the due date requirements and will deem them ineligible.

Applicants should initiate electronic applications early in the application development process and should submit early on the due date or before to aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Web site Portal. The *Grants.gov* Web site Portal provides organizations with the ability to submit applications for HHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the *Grants.gov* Web site at the following Internet address: *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard-copy signatures for certain Program-related forms, or original materials, as required by the announcement. Applicants must review both the grant announcement, as well as the application guidance provided within the *Grants.gov* application package, to determine such requirements. Applicants must submit any required hard-copy materials, or documents that require a signature, separately via mail to the HHS/OPHS Office of Grants Management, which, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the *Grants.gov* Web site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. HHS must receive all required mail-in items by the due date requirements specified above. Mail-in items may only include publications, résumés, or organizational documentation.

Upon completion of a successful electronic application submission via the *Grants.gov* Web site Portal the applicant will receive a confirmation page from *Grants.gov* to indicate the date and time (Eastern Time) of the electronic application submission, as well as the *Grants.gov* Receipt Number. Applicants must print and retain this confirmation for their records, as well as a copy of the entire application package.

Grants.gov will validate all applications submitted via the *Grants.gov* Web site Portal. Any applications deemed ''Invalid'' by the *Grants.gov* Web site Portal will not proceed to the HHS/OPHS eGrants system, and HHS/OPHS has no responsibility for any application that is not validated and transferred to HHS/OPHS from the *Grants.gov* Web site Portal. *Grants.gov* will notify the applicant regarding the application validation status. Once the *Grants.gov* Web site Portal has successfully validated the application, applicants should immediately mail all required hard-copy materials to the HHS/OPHS Office of Grants Management by the deadlines specified above. Applicants must clearly identify their Organization's name and *Grants.gov* Application Receipt Number on all hard-copy materials.

Once the *Grants.gov* has validated an application, it will electronically proceed to the HHS/OPHS eGrants system for processing. Upon receipt of both the electronic application from the *Grants.gov* Web site Portal, and the required hard-copy mail-in items, applicants will receive notification via mail from the HHS/OPHS Office of Grants Management to confirm the receipt of the application submitted by using the *Grants.gov* Web site Portal.

Applicants should contact *Grants.gov* regarding any questions or concerns regarding the electronic application process conducted through the *Grants.gov* Web site Portal.

Electronic Submissions via the HHS/OPHS eGrants System. The HHS/OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the HHS/OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov,* or may be requested from the HHS/OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the HHS/OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program-related forms (*e.g.*, Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the HHS/OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to send to the HHS/OPHS Office of Grants Management separate from the electronic submission; however, applicants must enter these mail-in items on the eGrants Application Checklist at the time of electronic submission, and HHS must receive them by the due date requirements specified above. Mail-in items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the HHS/OPHS eGrants system will provide the applicant with a confirmation page to indicate the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission, including all electronic application components, required hard-copy original signatures, and mail-in items, as well as the mailing address of the HHS/OPHS Office of Grants Management, to which applicants must submit all required hard copy materials.

As items the HHS/OPHS Office of Grants Management receives items, the electronic application status will be updated to reflect the receipt of mail-in items. We recommend applicants monitor the status of their applications in the HHS/OPHS eGrants system to ensure that the receipt of all signatures and mail-in items.

Mailed or Hand-Delivered Hard-Copy Applications. Applicants who submit applications in hard copy (via mail or hand-delivered) must submit an original and two copies of the application. An individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award must sign the original application.

HHS will consider mailed or hand-delivered applications as having met the deadline if the HHS/OPHS Office of Grant Management receives them on or before 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the HHS/OPHS–1. HHS will return unread

applications that do not meet the deadline.

Applicants should submit their applications to the following address: Director, Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootten Parkway, Suite 550, Rockville, MD 20852

4. *Intergovernmental Review:* This program is not subject to the review requirements of Executive Order 12372, Intergovernmental Review of Federal Programs.

5. *Funding Restrictions:* Allowability, allocability, reasonableness, and necessity of direct costs applicants may charge appear in the following documents: OMB–21 (Institutes of Higher Education); OMB Circular A–122 (Nonprofit Organizations); and 45 CFR part 74, Appendix E (Hospitals). Copies of these circulars are available at the following Internet address: *http://www.whitehouse.gov/omb.* No pre-award costs are allowed.

6. *Other Submission Requirements:* N/A.

V. Application Review Information

1. *Criteria:* HHS/OGHA staff will screen applications for completeness and for responsiveness to the program guidance. Applicant should pay strict attention to addressing these criteria, as they are the basis upon which the application will be judged. An application judged to be non-responsive or incomplete will be returned to the applicant without review.

An application that is complete and responsive to the guidance will undergo an evaluation for scientific and technical merit by an appropriate peer-review group specifically convened for this solicitation and in accordance with HHS policies and procedures. The panel may contain both Federal and non-Federal representatives. As part of the initial merit review, the application will receive a written critique. The ad hoc peer review group will discuss fully all applications recommended for approval and will assign a priority score for funding. HHS/OGHA will assess an eligible application according the following criteria:

(1) *Technical Approach (40 points):*

- The applicant's presentation of a sound and practical technical approach for executing the requirements with adequate explanation, substantiation and justification for methods for handling the projected needs of Indonesian health-care institutions.
- The successful applicant must demonstrate a clear understanding of the scope and objectives of the President's *National Strategy* and *Implementation Plan* and the HHS *Pandemic Influenza Plan,* a recognition of potential difficulties that could arise in performing the work required, and an understanding of the close coordination necessary between the Singaporean and Indonesian Governments, the U.S. Agency for International Development, and other organizations, such as the World Health Organization and the United Nations Children's Fund.
- Applicants must submit a strategic plan that outlines the schedule of activities and expected products of the Group's work, with benchmarks at months six and 12.

(2) *Personnel Qualifications and Experience (20 points):*

- Project Leadership—For the technical and administrative leadership of the project requirements, successful applicants must demonstrate documented training, expertise, relevant experiences, local-language skills, leadership/management skills, and the availability of a suitable overall project manager and surrounding management structure to successfully plan and manage the project. The successful applicant will provide documented history of leadership in the establishment and management of training programs that involve training of health care professionals in countries other than the United States. Applicants should show documented managerial ability to achieve delivery or performance requirements as demonstrated by the proposed use of management and other personnel resources and to successfully manage the project, including subcontractor and/or consultant efforts, if applicable, as evidenced by the management plan and demonstrated by previous relevant experience.
- Partner Institutions and other Personnel-Applicants should provide documented evidence of the availability, training, qualifications, expertise, relevant experience, local-language skills, education and competence of the scientific, clinical, analytical, technical and administrative staff and any other proposed personnel (including from partner institutions, subcontractors and consultants), to perform the requirements of the work activities, as evidenced by résumés, endorsements and explanations of previous efforts.
- Staffing Plan—Applicants should submit a staffing plan for the conduct of the project, including the appropriateness of the time commitment of all staff and partner institutions, the clarity and appropriateness of assigned roles, and lines of authority. Applicants should also provide an organizational chart for each partner institution named in the application to show the relationships among the key personnel.
- Administrative and Organizational Framework—Applicants must demonstrate the adequacy of their administrative and organizational framework, with lines of authority and responsibility clearly drawn, and the adequacy of the project plan, with a proposed time schedule for achieving the objectives and maintaining quality control over the implementation and operation of the project. Applicants must show the adequacy of back-up staffing and the evidence they will be able to function as a team. The framework should identify the institution that will assume legal and financial responsibility and accountability for the use and disposition of funds awarded on the basis of this RFA.

(3) *Experience and Capabilities of the Organization (30 Points):*

- Applicants should submit documented relevant experience of their organization in managing projects of similar complexity and scope of activities in the developing world.
- Applicants should show the clarity and appropriateness of their lines of communication and authority for coordination and management of the project. Adequacy and feasibility of plans to ensure successful coordination of multiple-partner collaboration.
- Applicants must document their experience in recruiting qualified medical personnel for projects of similar complexity and scope in the developing world.

(4) *Facilities and Resources (10 Points):*

Applicants must document the availability and adequacy of facilities, equipment and resources necessary to carry out the activities specified under the ''Program Requirements'' Section of the announcement.

2. *Review and Selection Process:*

A panel of peer reviewers will review the application. The reviewers will address and consider each of the above criteria will in assigning the overall score. The Deputy Director for Operations of the HHS/Office of Global Health Affairs will make the award on the basis of score, program relevance, and availability of funds.

VI. Award Administration Information

1. *Award Notices:* HHS/OGHA does not release information about individual applications during the review process until it has made final funding decisions. When HHS/OGHA has made these decisions, it will notify applicants by letter regarding the outcome of their

applications. The official document to notify an applicant HHS has approved and funded an application is the Notice of Award, which specifies to the awardee the amount of money awarded, the purpose of the agreement, the terms and conditions of the agreement, and the amount of funding, if any, by the awardee will contribute to the project costs.

2. *Administrative and National Policy Requirements:*

The regulations set out at 45 CFR parts 74 and 92 are the HHS rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients, except those covered by part 92, which governs awards to U.S. State and local Governments. Applicants funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 is available at the following Internet address: *http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html.*

3. *Reporting:* The projects must have an evaluation plan, consistent with the scope of the proposed project and funding level, that conforms to the project's stated goals and objectives. The evaluation plan should include both a process evaluation to track the implementation of project activities, and an outcome evaluation to measure changes in knowledge and skills attributable to the project. Project funds may support evaluation activities.

In addition to conducting its own evaluation of projects, the successful applicant must be prepared to participate in an external evaluation, supported by HHS/OGHA and conducted by an independent entity, to assess the efficiency and effectiveness of the project funded under this announcement.

Within 30 days following the end of each of quarter, awardees must submit a performance report no more than ten pages in length to HHS/OGHA. HHS/OGHA will forward a sample monthly performance report will be provided at the time of notification of award. At a minimum, monthly performance reports should include the following:

- A concise summary of the most significant achievements and problems encountered during the reporting period, e.g., number of training courses held and number of trainees.
- A comparison of work progress with objectives established against the quarter using the grantee's implementation schedule, and where the grantee did not meet such objectives, a statement of why.
- Specific action(s) the grantee would like HHS/OGHA to undertake to alleviate a problem.
- Other pertinent information that will permit the monitoring and oversight of project operations.
- A quarterly financial report to describe the current financial status of the funds used under this award. The awardee and HHS/OGHA will agree at the time of award on the format of this portion of the report.

Within 90 days following the end of the project period, the awardee must submit a final report containing information and data of interest to HHS, the U.S. Congress, and other countries. HHS/OGHA will send to successful applicants the specifics as to the format and content of the final report and the summary. At minimum, the report should contain the following:

- A summary of the major activities supported under the agreement and the major accomplishments resulting from activities to improve influenza preparedness in Indonesia.
- An analysis of the project based on the problem(s) described in the application and needs assessments, performed prior to or during the project period, including a description of the specific objectives stated in the grant application and the accomplishments and failures resulting from activities during the grant period.

Awardees must submit quarterly performance reports and the final report may be submitted to: Mr. Dewayne Wynn, Grants Management Specialist, Office of Grants Management, HHS/OPHS, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, phone +1 (240) 453–8822.

A Financial Status Report (FSR) SF–269 is due 90 days after the close of each 12-month budget period to HHS/OPHS Office of Grants Management.

VII. Agency Contacts

For assistance on administrative and budgetary requirements, please contact: Mr. DeWayne Wynn, Grants Management Specialist, Office of Grants Management, HHS/OPHS, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, phone +1 (240) 453–8822.

For assistance with questions regarding program requirements, please contact: Amar Bhat, PhD, Director, Office of Asia and the Pacific Office of Global Health Affairs, U.S. Department of Health and Human Services, 5600 Fishers Lane, Suite 18–101, Rockville, MD 20857, *Phone Number:* 301–443–1774.

VIII. Tips for Writing a Strong Application

Include DUNS Number. You must include a DUNS Number to have your application reviewed. HHS will not review applications without a DUNS number. To obtain a DUNS number, go to *www.dunandbradstreet.com* or call 1–866–705–5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

Keep your audience in mind. Reviewers will use only the information contained in the application to assess the application. Please be sure the application and responses to the program requirements and expectations are complete and clearly written. Do not assume reviewers are familiar with the applicant organization. Keep the review criteria in mind when writing the application.

Start preparing the application early. Allow plenty of time to gather required information from various sources.

Follow the instructions in this guidance carefully. Place all information in the order requested in the guidance. If you do not place the information in the requested order, you could receive a lower score.

Be brief, concise, and clear. Make your points understandable. Provide accurate and honest information, including candid accounts of problems and realistic plans to address them. If you are omitting any required information or data, explain why. Make sure the information provided in each table, chart, attachment, etc., is consistent with the proposal narrative and information in other tables.

Be organized and logical. Many applications fail to receive a high score because the reviewers cannot follow the thought process of the applicant, or because parts of the application do not fit together.

Be careful in the use of appendices. Do not use the appendices for information required in the body of the application. Be sure to cross-reference all tables and attachments located in the appendices to the appropriate text in the application.

Carefully proofread the application. Misspellings and grammatical errors will impede reviewers in understanding the application. Be sure pages are numbered (including appendices), and you follow page limits. Limit the use of abbreviations and acronyms, and define each one at its first use and periodically throughout application.

Dated: September 26, 2006.

Sandra R. Manning,

Deputy Director for Operations, Office of Global Health Affairs, U.S. Department of Health and Human Services.

[FR Doc. E6–16178 Filed 9–29–06; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Surveillance and Response to Highly Pathogenic Avian and Pandemic Influenza in the Libyan Arab Jamahiriya

AGENCY: Office of Global Health Affairs, Office of the Secretary, DHHS.

ACTION: Notice.

Announcement Type: Single Eligibility—FY 2006 Initial Announcement.

Funding Opportunity Number: OGHA 06–025.

GSA Catalog of Federal Domestic Assistance: 93. 283.

DATES: October 2, 2006: Application Availability.

October 10, 2006: Optional Letter of Intent due by 5 p.m. ET.

October 17, 2006: Application due by 5 p.m. ET.

October 27, 2006: Award date.

SUMMARY: An influenza pandemic has greater potential than any other naturally occurring infectious disease to cause large and rapid global and domestic increases in death and serious illness. Preparedness is the key to substantially reducing the health, social, and economic impacts of an influenza pandemic and other public-health emergencies.

On November 1, 2005, President George W. Bush announced the U.S. *National Strategy for Pandemic Influenza* and the following day, Secretary Michael O. Leavitt released the HHS *Pandemic Influenza Plan.* One of the primary objectives of both documents is to leverage global partnerships to increase preparedness and response capabilities around the world with the intent of stopping, slowing, or otherwise limiting the spread of a pandemic to the United States.[1] Pillars Two and Three of the *National Strategy* set out the clear goals of ensuring the rapid reporting of outbreaks and containing outbreaks beyond the borders of the United States, by taking the following actions:

- Working through the International Partnership on Avian and Pandemic Influenza, as well as through other political and diplomatic channels, such as the United Nations and the Asia-Pacific Economic Cooperation Forum, to ensure transparency, scientific cooperation, and the rapid reporting of highly pathogenic avian and human influenza cases;
- Supporting the development of the proper scientific and epidemiological expertise in affected regions to ensure the early recognition of changes in the pattern of highly pathogenic avian or human influenza outbreaks;
- Supporting the development and maintenance of sufficient host-country laboratory capacities and diagnostic reagents in affected regions, to provide rapid confirmation of cases of influenza in animals and humans;
- Working through the International Partnership to develop a coalition of strong partners to coordinate containment efforts, that is, actions to limit the spread of an influenza with pandemic potential beyond where it is first located; and,
- Providing guidance to all levels of Government in affected nations on the range of options for risk-communication, infection-control, and containment.

We rely upon our international partnerships, with the United Nations (UN); international organizations; and private and non-profit organizations, to amplify our efforts, and will engage them on a multilateral and bilateral basis. Our international effort to contain and mitigate the effects of an outbreak of pandemic influenza is a central component of our overall strategy. In many ways, the character and quality of the U.S. response and that of our international partners could play a determining role in the severity of a pandemic.

The International Partnership on Avian and Pandemic Influenza, launched by President Bush at the UN General Assembly in September 2005, stands in support of multinational organizations and national Governments. Members of the Partnership have agreed that the following ten principles will guide their efforts:

1. International cooperation to protect the lives and health of our people;
2. Timely and sustained, high-level, global, political leadership to combat avian and pandemic influenza;
3. Transparency in reporting of influenza cases in humans and in animals caused by virus strains that have pandemic potential, to increase understanding and preparedness, and especially to ensure rapid and timely response to potential outbreaks;
4. Immediate sharing of epidemiological data and samples with the World Health Organization (WHO) and the international community to detect and characterize the nature and evolution of any outbreaks as quickly as possible, by using, where appropriate, existing networks and mechanisms;
5. Rapid reaction to address the first signs of accelerated transmission of H5N1 and other highly pathogenic influenza strains, so appropriate international and national resources can be brought to bear;
6. Prevent and contain an incipient epidemic through capacity-building and in-country collaboration with international partners;
7. Work in a manner complementary to and supportive of expanded cooperation with and appropriate support of key multilateral organizations (including WHO, Food and Agriculture Organization, and the World Organization for Animal Health);
8. Timely coordination of bilateral and multilateral resource allocations; dedication of domestic resources (human and financial); improvements in public awareness; and development of economic and trade contingency plans;
9. Increased coordination and harmonization of preparedness, prevention, response, and containment activities among nations, complementing domestic and regional preparedness initiatives and encouraging, where appropriate, the development of strategic regional initiatives; and,
10. Actions based on the best available science.

Through the Partnership and other bilateral and multilateral initiatives, we will promote these principles and support the development of an international capacity to prepare for, detect, and respond to an influenza pandemic.

Following the President's National Strategy, this announcement seeks to support selected foreign Governments through their Ministries of Health or other responsible Ministries for human-health or public-health emergency preparedness.

Proposals may only include program elements that fall within designated areas under the Three Pillars of the U.S. National Strategy assigned to the U.S. Department of Health and Human Services (HHS) as described below. This support is meant to enhance, and not to supplant, current influenza-surveillance activities. Proposals should build upon infrastructure already in place. Preference will go to countries with limited resources, where influenza surveillance is not well-established, and

[1] *National Stragegy for Pandemic Influenza,* p. 2.

which have experienced outbreaks of H5N1 influenza in animals or humans or are judged at-risk of such outbreaks by HHS and the WHO Secretariat. Only the Ministry of Health of the Great Socialist People's Libyan Arab Jamahiriya is eligible under this announcement.

The term ''containment'' as used in this announcement, warrants special consideration. ''Containment'' here refers to efforts to control the emergence of a new influenza virus with pandemic potential and high pathogenicity that is, a new influenza strain efficiently transmitted among humans and causes severe disease in a high proportion of infected persons. The goal of containment would be to identify the first outbreak with such a strain, and to apply a coordinated, integrated, intensive public-health response to interrupt transmission among humans. (Severe Acute Respiratory Syndrome, for example, was ultimately contained after it spread to a number of countries.) A principle intent of this announcement is to assist partner countries to build capacity for identification, investigation and containment of such a strain.

Pillar I. Preparedness and Communication

1. National Government Public-Health Preparedness Plans, Policy, and Coordination; and,
2. Communications:
(a) Targeting health care workers (HCW); and,
(b) National Government spokespersons and risk messages.

Pillar II. Surveillance and Detection

1. Laboratory capacity and infrastructure for virologic surveillance;
2. Epidemiology capacity and infrastructure for disease surveillance;
3. Sentinel, laboratory-based surveillance for influenza-like illness (ILI) and/or hospital-based surveillance for severe disease; development or enhancement of an in-country integrated (lab and epi) surveillance network for influenza; and
4. Comprehensive, territory-wide surveillance for cases and clusters of suspicious respiratory and febrile illness that could represent emerging new pandemics.

Note: Components 3 and 4 have distinct operational requirements, but awardees must fully integrate them into one overall, multi-disciplinary surveillance network for influenza.

Pillar III. Response and Containment

1. Local rapid-response teams; and,
2. Infection control in public health-care settings.

Pillar One

Pandemic influenza presents a massive communications challenge to all levels of a nation's Government as well as its society, economy, and critical infrastructure. The uncertainty of the course of a pandemic and unknown scientific factors, as well as unforeseen and unintended outcomes with respect to Governmental actions and statements make this a communications-management issue of formidable proportion. The economic and societal effects of such a pandemic could have a significant detrimental impact on a nation and its people.

A critical component of national preparedness for an influenza pandemic is informing the public about this potential threat and providing a solid foundation of information upon which to base future actions. To be effective, Governments should base these strategies on scientifically derived risk-communications principles that are critical before, during, and after an influenza pandemic. Effective communication guides the public, the news media, health-care providers, and other groups in responding appropriately to outbreak situations and adhering to public-health measures. These guidelines must be an integral part of a national pandemic plan as developed and coordinated by a nation's appropriate agencies, such as Ministries of Health, Agriculture, Trade, Information, and Tourism.

Public-health and health-care workers will be the first to observe and report suspicious clusters of respiratory disease, and could also be the most trusted resources of information for the populations they serve. Therefore, these audiences must be a specific target for health-communications marketing and strategy. Communication strategies should include formative evaluation, message development and testing, and summative evaluation.

In addition, these critical audiences will be integral to any national response. Yet, worksite restrictions may hamper efforts to receive and provide validated up-to-date information (lack of computers, Internet access, quarantining, *etc.*). A mechanism for the rapid dissemination of information both to national and District or Provincial health-response units and international partners is necessary.

To build trust and assure that information flows through common channels of communication, coordination of media messages, training of journalists and development of credible national Government spokespeople is also recommended.

Pillar Two

One component of pandemic preparedness involves understanding the impact annual epidemics of influenza have on a population. Data regarding impact are critical to the development of prevention and control measures, such as vaccination policies. Vaccination efforts are the cornerstone of influenza prevention, and will be the primary means of mitigating the impact of an influenza pandemic, when we have a vaccine proven safe and effective against the pandemic strain. Another critical area for preparedness is the ability to identify potential human cases of novel influenza strains, so national Governments and the international community can launch early efforts to attempt to stop outbreaks.

The systematic collection of influenza-surveillance data over time is necessary to monitor and track the activity of influenza virus and disease, and is essential to understanding the impact influenza has on a country's population. Developing influenza-surveillance networks is critical for the rapid detection of new variants, including those with pandemic potential, to contribute to the global disease-surveillance system. Global collaboration, under the coordination of the Secretariat of the World Health Organization (WHO), is a key feature of influenza surveillance.

The WHO established an international laboratory-based surveillance network for influenza in 1948, which currently consists of 113 National Influenza Center (NIC) laboratories in 84 countries, and four WHO Collaborating Centers for Reference and Research of Influenza (including one located at the HHS Centers for Disease Control and Prevention [CDC]). The primary purposes of the WHO network are to detect the emergence and spread of new antigenic variants of influenza, to use this information to update the formulation of annual human influenza vaccine, and to provide as much warning as possible about the next pandemic. This system provides the foundation of worldwide influenza prevention and control, and is a critical contribution to preserving global health security.

Monitoring of human and animal influenza viruses and providing contributions to the global disease-surveillance system, including the sharing of appropriate specimens and viral isolates, will assure the data used in the WHO Secretariat's annual vaccine recommendations are relevant to each country that participates. Increased participation in the global surveillance system for influenza viruses will enhance each country's ability to monitor severe respiratory illness, to develop vaccine policy for influenza, and to help build global and regional strategies for the prevention and control

of influenza in animals and humans. Monitoring the disease activity of influenza is important to facilitate planning for the allocation of resources, appropriate and clear communications with the public, containment and response interventions, and outbreak investigations.

Pillar Three

In the absence of available vaccine or specific antiviral treatment, infection control and related non-pharmaceutical public-health interventions are the mainstay of reducing the spread and impact of an influenza pandemic. Correct and consistent infection-control practices should be a part of routine health-care delivery, an active consideration in planning for pandemic influenza and other infectious- disease outbreaks, and an integral part of outbreak response and control. The dual goals of providing safe health-care to patients and protecting health-care personnel while they work are critical to maintaining a functional health-care system. Elements of health-care related infection-control also influence community guidance for self-protection and the prevention of infection.

The principal intent of this assistance is to support surveillance and response, to allow for the containment of a highly pathogenic virus transmissible among humans. A second intent is to support the development of epidemiologic, laboratory, and related capacity to detect, respond to, and monitor shifts in influenza viruses, as well as in severe respiratory illness syndromes. A third intent is to help strengthen the connection of national institutions, especially National Influenza Centers, to more fully participate in the WHO Influenza Program, and be more capable of sharing specimens and quality data of the circulation of influenza viruses from throughout the country.

Measurable outcomes of the program will be in alignment with the three Pillars of the HHS Pandemic Influenza Operational Plan and the Pillars of the President's *National Strategy for Pandemic Influenza,* the principles of the International Partnership on Avian and Pandemic Influenza, and the following performance goal(s) for the Office of Global Health Affairs (OGHA).

This announcement is only for non-research activities supported by HHS, including OGHA. If an applicant proposes research activities, HHS will not review the application. For the definition of ''research,'' please see the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Recipient Activities

The proposal may include activities under all three Pillars. However, the application all of those activities should prioritize the principal intent of rapidly building epidemiologic, laboratory, and response capabilities to contain an emergent, highly pathogenic virus transmissible among humans. Applicants should allocate a minimum of 70 percent of resources to Pillar Two activities unless they present strong evidence that the key capacities represented in Pillar Two are already well-established in the country, or can be made such with less than 70 percent of the resources for which applicants have applied. Applicants can select activities other than Pillar Two based on the National Pandemic Plan. If applicants *do not propose any activities* for one or more Pillars, they must describe a brief plan for how they will address those activities, and must describe the funding sources to underwrite those activities, whether national resources or financing from an alternate partner or funding source.

Activities recipients may perform under this program are as follows:

Pillar I Preparedness and Communication

1.1 Preparedness Plans, Policy, and Coordination

- Developing a high-level, Inter-Ministerial Task Force or working group for influenza that meets regularly with representation from both the human- and animal-health sectors, Government Ministries, businesses, and non-governmental organizations (NGOs); to determine ways to improve national influenza surveillance; develop prevention and control measures such as vaccine policy; and work on national pandemic preparedness.
- Adhering to the core principles of the International Partnership on Avian and Pandemic Influenza (*http://www.state.gov/r/pa/prs/ps/2005/53865.htm*), including transparency and rapid reporting of cases.
- Establishing a national plan, based on scientifically valid information, for containing influenza in animals with human pandemic potential, and for responding to a human pandemic.
- Testing and executing those plans.
- Committing to the timely coordination of bilateral and multilateral resource allocations, the dedication of domestic resources (human and financial), and the development of contingency plans.

1.2 Communications

- Establishing a communications component as part of a National Pandemic Plan, coordinated by the Ministries of Health, Agriculture, Information, Trade, Tourism, etc., as appropriate to accomplish the following:
- Establishing a communications strategy to coordinate the development, testing and evaluation of health information among involved Ministries and bilateral/multilateral agencies that are providing assistance.
- Prepare public-health messages in local languages to ask medical and public-health workers to report unusual cases of respiratory disease to local authorities, by emphasizing that a cluster of severe pneumonia of unknown origin anywhere in the world constitutes a potential international emergency.
- Prompt reporting of cases and clusters of human infection with avian influenza A (H5N1) by doing the following:
  - Providing technical support for local-language public-health education and outreach efforts by Ministries of Health and Agriculture, the World Health Organization (WHO)/Headquarters, and the relevant WHO Regional Offices;
  - Providing local-language training for health-care providers in identifying patients with risk factors for disease caused by highly pathogenic avian influenza A (H5N1); and,
  - Supporting public-sector field staff in Districts and Provinces in detecting and reporting suspected cases of highly pathogenic avian influenza.
- Develop public-health materials in local languages for use in community-based educational campaigns that inform people about infection control and public-health containment (or ''social distancing'') measures (*e.g.,* quarantine, school closures, travel restrictions) that can control outbreaks of pandemic influenza. These materials will also provide information about the use of proper and safe antiviral drugs and vaccines.
  - Ensure these activities and messages fit together and are consistent with inter-Ministerial Governmental social- mobilization efforts and similar efforts funded by the U.S. Agency for International Development (USAID) and other donors.
- Develop local-language mass-media and community-outreach programs that promote AI awareness and behavior change, if other partners are not addressing this area consistent with the national pandemic response plan.

• Identify and train credible national Government spokespeople.

• Partner early with media editors and journalists, if other partners are not addressing this area, consistent with the national pandemic response plan, to:

○ Provide valid training on avian influenza to journalists and editors.

• Develop public-health materials in local languages that inform health-care workers about infection-control measures that can control the spread of pandemic influenza in health-care facilities and in the workplace. These materials will also provide information about antiviral use.

• Develop health-promotion and education activities in local languages to increase professional awareness of the need to detect each and every case and cluster of human respiratory infection (family, health care, or institutional) during the pandemic-alert period.

• Work with the WHO Secretariat and other multilateral organizations, existing bilateral programs, and private-sector partners to develop workplace, community- and hospital-based health prevention, promotion, and education activities.

Pillar II. Surveillance and Detection

2.1 Laboratory Capacity and Infrastructure

• Train laboratory scientists and technicians in proper laboratory techniques for influenza detection, typing, and sub-typing.

• Install and maintain laboratory equipment and infrastructure needed to carry out the functions of WHO-certified National Influenza Center, if possible, or work towards the capacity to carry out those functions.

• Maintain and assure biosafety and biosecurity of targeted laboratories according to national and international standards.

• Install and maintain information-management equipment for reporting of results from influenza laboratory work, back to the sites providing specimens, to national leaders, and to the WHO Secretariat and other international partners.

2.2 Epidemiology Capacity and Infrastructure

• Train epidemiologists at appropriate levels and sufficient scale to be able to support multiple surveillance, outbreak investigation and response, and disease-control activities involved in avian and pandemic preparedness.

• Establish needed information and data-management capacity and telecommunications capacity needed for surveillance, outbreak response, and disease control, including containment of a suspect pandemic virus.

• Establish other needed infrastructure critical to supporting outbreak detection, response, and containment efforts.

2.3 Sentinel, Laboratory-Based Surveillance for Influenza-Like Illnesses and/or Hospital-Based Surveillance for Severe Disease

• Develop a nationwide system to collect virologic and epidemiologic data for influenza, including appropriate samples and viral isolates, by establishing three or more sites with good geographic distribution throughout the country. Each site will consist of a local laboratory and one or more public or private clinics or hospitals from which to collect data. Each site should do the following:

○ Conduct virologic and epidemiologic surveillance for influenza by collecting information, including appropriate samples and specimens for virus isolation year-round;

○ Have lab capacity for performing the isolation and typing of influenza viruses; or at least molecular technology for identification;

○ Collect information on influenza-like illnesses and/or severe respiratory disease at each site by building on information already available. Possible sources of information are the following: (1) Recording visits by patients with influenza-like-illness to physicians or public or private primary-care clinics or hospitals, based on a standard case definition; (2) Monitoring hospital admissions for severe respiratory illness and pneumonia, based on a standard case definition. The sites should collect patient information, such as age, patient history and other relevant information;

○ Collect a subset of at least 10 (and preferably up to 25) specimens from the patient populations under surveillance that exhibit febrile, acute upper-respiratory illness weekly during the period of surveillance by using a standard case definition (preferably one established by the WHO Secretariat) and submit them to the local laboratory for the site;

○ During unusual outbreaks of influenza, such as outbreaks with unusual epidemiologic characteristics, or those related to infections by highly pathogenic avian or other animal influenza viruses; collect epidemiologic information to characterize the outbreak; and collect additional samples for viral isolation, including tissue samples, if appropriate; and submittal to the site laboratory. Report the outbreak to the National Influenza Center for further transmittal to one or more of the WHO-designated Collaborating Centers for Influenza;

○ Prepare and provide regular weekly reports on the epidemiologic information collected (influenza-like-illness and/or severe respiratory illness) to the local laboratory and to the National Influenza Center for further transmittal to one or more of the WHO-designated Collaborating Centers for Influenza;

○ If proper biosafety conditions exist, perform viral isolation for influenza viruses, either in tissue culture or in eggs, type positive isolates for influenza A and B, and, if possible, subtype influenza viruses;

○ Store original clinical materials at −70 degrees celsius, until the beginning of the next influenza season; and,

○ Submit viral isolates to the National Influenza Center within the country on at least a monthly basis for more complete analysis.

• Each WHO-certified National Influenza Center also will be responsible for and commit to performing the following activities:

○ Performing preliminary antigenic and, if possible, genetic characterization on the virus isolates submitted from the laboratories in the surveillance sites (including those isolates grown at the NIC);

○ Send, as quickly as possible, representative influenza virus isolates to one of the four WHO Collaborating Centers for Influenza, including any low-reacting viruses, as tested by using the WHO reagent kit, each month during the period of surveillance and more frequently, if possible;

○ If any viruses are unsubtypable as tested by using the WHO kit, alert the WHO Secretariat and send the virus isolate to one of the four WHO Collaborating Centers for Influenza immediately;

○ During the period of surveillance, provide weekly influenza-surveillance information, preferably electronically to the WHO Secretariat through FluNet;

○ Provide an annual national summary on influenza activity, virological information, and other relevant information on influenza to the WHO Secretariat and the WHO Collaborating Center for Influenza at HHS/CDC;

○ Provide technical expertise and training to support the surveillance sites and laboratories in the national network in developing the capacity to type and subtype viruses and when feasible to identify avian influenza viruses by molecular techniques; and provide reagents to national public-health laboratories as able;

○ Establish the capacity to identify avian influenza viruses in specimens collected from suspect cases using molecular diagnostic techniques;

○ Provide support for human-health diagnostic laboratories in your network by giving assistance in the development and implementation of rapid laboratory diagnostics protocols and methods, and to establish objectives for rapid screening; and,

○ Establish linkages with surveillance systems that detect influenza viruses in animal populations and with national Government authorities responsible for animal health.

• Foreign Governments that apply for funding through this announcement should play a substantial role in the development and support of the influenza-surveillance network in their countries, by committing to the following:

○ Timely and sustained high-level political leadership to combat avian and novel influenza strains;

○ Complete transparency in the reporting of influenza cases in humans and animals caused by virus strains that have pandemic potential;

○ Timely sharing of influenza-surveillance information with the WHO Global Influenza Surveillance network by facilitating the regular exchange of information and virus samples with one of the four WHO Collaborating Centers for Influenza; and,

○ Providing continued support for influenza activities within the country and developing a plan for increased participation in the global influenza surveillance network over a five-year period.

2.4 Comprehensive, National Surveillance for Clusters and Cases of Severe Respiratory and Febrile Syndromes That Might Represent Emergent Cases From a Highly Pathogenic Influenza Virus of Pandemic Potential

• Establish early-warning networks, adapt international case definitions, and implement standards for laboratory diagnostics of human and animal samples.

• Strengthen early-warning systems for reporting human cases of infection with influenza A (H5N1) by:

○ Initiating or enhancing Participation in the WHO Global Outbreak Alert and Response Network (GOARN) to report possible outbreaks of highly pathogenic avian influenza in humans and the WHO Global Influenza Surveillance Network to share specimens and viruses.

• Develop and establish village-based public-sector alert-and-response surveillance systems for human cases of influenza. By providing health education at the community level and to providers and setting up a system for reporting of suspect cases based on a standard case definition.

• Develop a system that rapidly notifies National Government authorities of suspect avian influenza cases and provides appropriate samples for testing at the national level if the capacity does not exist at a country's network site.

• Establish a system to monitor for severe cases of respiratory illness for a possible case or cluster of the H5N1 virus or other respiratory diseases that pose a global threat.

• Develop protocols and tools to investigate cases and clusters, including the widespread dissemination of specimen collection and transport materials, to allow rapid diagnosis.

Note: The WHO-certified National Influenza Center (NIC) within a country can be one of the surveillance sites, and, as such, conduct all the activities listed above under components 2.3 and 2.4. However, component 2.4 is often the responsibility of units of Ministries of Health other than the laboratory unit that serves as the National Influenza Center, and Governments might need to share resources across units and establish protocols to fulfill the requirements of components 2.3 and 2.4. If there are two or more NICs within a country, each NIC could participate as a site; however, NICs within a single country should work together and place emphasis on the addition of new surveillance sites. In addition, the NIC(s) should act as the focal point and authority within the country on influenza surveillance, and be the main point of communication with the WHO Secretariat and WHO Collaborating Centers for the rapid submittal of virus isolates and information into the global influenza surveillance system.

Pillar III. Response and Containment

3.1 Local Rapid-Response Teams (RRT)

• Develop and adopt rapid-response protocols for use in responding quickly to credible reports of human-to-human transmission that could indicate the beginnings of an influenza pandemic. Awardees may carry out this action in conjunction with HHS, USAID, the WHO Secretariat, and other donor countries.

• Develop and train in-country rapid-response teams to assess and report quickly on possible outbreaks of avian and human influenza at the village level by accomplishing the following:

○ Developing national and regional rapid-response teams deployable within 24 hours; and,

○ Working with GOARN to train members of response teams and staff from Ministries of Health and Agriculture. Training topics should include outbreak investigations, cluster investigations, case-control investigations, and case-cohort investigations.

3.2 Infection Control

• Develop local-language public-health materials, in cooperation with HHS that inform local health-care workers and hospital administrators in priority counties about infection-control measures to control the spread of pandemic influenza in health-care facilities and in workplace health facilities. The information should include guidance about the appropriate use of antiviral drugs and vaccines.

• Develop and/or field-test and evaluate culturally and economically appropriate standards for infection-control practices and infrastructure for international health-care settings.

• Develop economical and culturally acceptable standardized preventive practices for the routine delivery of health-care that will be effective in prevention of health-care-associated influenza transmission during a pandemic. (*e.g.,* routine management standards for febrile respiratory illnesses).

• Develop and/or field-test and evaluate culturally and economically feasible community-based practices for the prevention of infection in community settings.

• Develop a costed national plan for delivering basic infection-control materials to and maintaining them in District and Provincial hospitals, with guidance for distribution and use in preparation for and during the anticipated disruptions caused by a pandemic of influenza.

• Develop, in partnership with international public-health agencies, instructional material for print or broadcast to target infection-control and nursing personnel in local languages to train them in appropriate cohorting, cleaning, worker protection and the use of protective equipment (*e.g.,* gloves, gowns, masks, *etc.*).

I. Funding Opportunity Description

Authority: Sections 301(a) and 307 of the Public Health Service Act (42 U.S.C. 241(a) and 42 U.S.C. 2421).

II. Award Information

The administrative and funding instrument to be used for this program will be the cooperative agreement in which substantial OGHA/HHS scientific and/or programmatic involvement is anticipated during the performance of the project. Under the cooperative

agreement, OGHA/HHS will support and/or stimulate awardee activities by working with them in a non-directive partnership role. HHS staff is substantially involved in the program activities, above and beyond routine monitoring. Through this cooperative agreement, HHS will collaborate in an advisory capacity with the award recipient, especially during the development and implementation of a mutually agreed-upon work plan. HHS will actively participate in periodic progress reviews and a final evaluation of the program.

Approximately $1,000,000.00 in fiscal year (FY) 2006 funds is available to support the agreement under the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 which provides funds to combat a potential influenza pandemic both domestically and internationally.

The anticipated start date is October 27, 2006. There will only be one single award made from this announcement. The project period for this agreement is for three (3) years with a budget period of 12 months.

The award recipient must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (Please *see* HHS Activities and Program Evaluation sections below.)

HHS/OS/OGHA activities for this program are as follows:

Pillar One

- Organize an orientation meeting with the award recipient to brief them on applicable U.S. Government expectations, regulations, policies and key management requirements, as well as report formats and contents.
- Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or sub grantees to be involved in the activities performed under this agreement.
- Review and approve the grantees' annual work plan and detailed budget.
- Review and approve the grantees' monitoring and evaluation plan, including for compliance with the performance management metrics and systems developed for U.S. Government and HHS assistance related to avian and pandemic influenza.
- Meet or teleconference on a regular basis, as necessary, with the grantee to assess quarterly technical and financial progress reports and modify plans as necessary.
- Meet on an annual basis with the grantee to review annual progress report for each U.S. Government fiscal year, and to review annual work plans and budgets for subsequent year.
- Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas relevant to influenza pandemic preparedness, containment, and mitigation.

Pillar Two

- Provide technical assistance on techniques and reagents for the identification of influenza viruses. Annually provide the WHO reagent kit, produced and distributed by the WHO Collaborating Center for Influenza at HHS/OGHA;
- Providing epidemiological and laboratory training;
- Providing technical consultation on the development of in-country influenza-surveillance networks;
- Providing confirmation of antigenic analysis and more detailed characterization information on the influenza virus isolates submitted to HHS/OGHA, with written reports back to the National Influenza Center; and,
- Providing technical advice on the conduct of local and regional epidemiologic outbreak investigations.

Pillar Three

- Providing technical advice and training in the development of local rapid-response teams;
- Providing technical advice for the development of policies and capabilities for rapidly mobilizing materials from stockpiles of pharmaceuticals and commodities to the site of an outbreak; and,
- Providing technical advice and training in developing plans for infection control.

III. Eligibility Information

1. Eligible Applicants

This is a single source, cooperative agreement with the Ministry of Health of the Great Socialist People's Libyan Arab Jamahiriya (Libya). On November 1, 2005, President George W. Bush announced the U.S. *National Strategy for Pandemic Influenza*, and the following day Secretary Michael O. Leavitt released the HHS *Pandemic Influenza Plan*. One of the primary objectives of both documents is to leverage global partnerships to increase preparedness and response capabilities around the world ''with the intent of stopping, slowing or otherwise limiting the spread of a pandemic to the United States.''[1] Pillars Two and Three of the *National Strategy* set out the clear goals of ensuring the rapid reporting of outbreaks and containing outbreaks beyond the borders of the United States.

We rely upon our international partnerships, with the United Nations (UN); international organizations; and private, non-profit organizations, to amplify our efforts, and will engage them on a multilateral and bilateral basis. Our international effort to contain and mitigate the effects of an outbreak of pandemic influenza is a central component of our overall strategy. In many ways, the character and quality of the U.S. response and that of our international partners could play a determining role in the severity of a pandemic.

The International Partnership on Avian and Pandemic Influenza, launched by President Bush at the UN General Assembly in September 2005, stands in support of multinational organizations and national Governments. Members of the Partnership have agreed that the following ten principles will guide their efforts:

1. International cooperation to protect the lives and health of our people;
2. Timely and sustained, high-level, global, political leadership to combat avian and pandemic influenza;
3. Transparency in reporting of influenza cases in humans and in animals caused by viruses trains that have pandemic potential, to increase understanding and preparedness, and especially to ensure rapid and timely response to potential outbreaks;
4. Immediate sharing of epidemiological data and samples with the World Health Organization (WHO) and the international community to detect and characterize the nature and evolution of any outbreaks as quickly as possible, by using, where appropriate, existing networks and mechanisms;
5. Rapid reaction to address the first signs of accelerated transmission of H5N1 and other highly pathogenic influenza strains, so appropriate international and national resources can be brought to bear;
6. Prevent and contain an incipient epidemic through capacity- building and in-country collaboration with international partners;
7. Work in a manner complementary to and supportive of expanded cooperation with and appropriate support of key multilateral organizations (including the WHO, Food

[1] *National Strategy for Pandemic Influenza*, p. 2.

and Agriculture Organization, and the World Organization for Animal Health);

8. Timely coordination of bilateral and multilateral resource allocations; dedication of domestic resources (human and financial); improvements in public awareness; and development of economic and trade contingency plans;

9. Increased coordination and harmonization of preparedness, prevention, response and containment activities among nations, complementing domestics and regional preparedness initiatives, and encouraging where appropriate the development of strategic regional initiatives; and,

10. Actions based on the best available science.

Through the Partnership and other bilateral and multilateral initiatives, we will promote these principles and support the development of an international capacity to prepare for, detect, and respond to an influenza pandemic. Based on an overall public health analysis for pandemic flu, Libya requires assistance in detection, surveillance and other areas to manage and identify Avian Influenza.

Avian Influenza is a significant burden on neighboring countries of Libya. Egypt, for example, has consistently identified the H5N1 virus in poultry and humans resulting in human fatalities and the near decimation of its poultry industry. Other countries proximate to Libya which have reported human cases of H5N1 include Turkey, Iraq, and Azerbaijan. Sharing the same bird fly-ways and trading goods daily with many of its neighboring countries already affected by H5N1, Libya is at heightened risk. For these reasons, eligibility for this cooperative agreement is limited to the country of Libya.

Twenty-two years of sanctions has isolated Libya from the rest of the world and exacerbated the seriousness of the situation within Libya. The sanctions have prevented Libya from experiencing the benefits of medical training in state-of-the art practice and scientific collaborations leaving Libya vulnerable to an influenza pandemic.

Libya recently appointed its first Minister of Health and is in the early stages of developing a Ministry of Health. Previously, under the General People's Committee for Health and Environment of the Great Socialist People's Libyan Arab Jamahiriya, public health services did not in exist. With the control and governance of public health services now delegated to Libya's Ministry of Health, the Ministry of Health assumes responsibility for developing and building the capacity of the public health care system. Therefore, in accordance with the guidance presented here, and the demand to seek Ministers of Health of countries affected, the only eligible source for any efforts in building the capacity of the public health care system in the country of Libya is the Minister of Health.

2. Cost-Sharing or Matching

Although cost-sharing, matching funds, and cost participation are not a requirement of this agreement, preference may go to organizations that can leverage additional funds to contribute to program goals. If applicants receive funding from other sources to underwrite the same or similar activities, or anticipate receiving such funding in the next 12 months, they must detail how the disparate streams of financing complement each other.

3. Other - (If Applicable)

If an applicant requests a funding amount greater than the ceiling of the award range, HHS will consider the application non-responsive, and it will not enter into the review process. HHS will notify the applicant that the application did not meet the submission requirements.

IV. Application and Submission Information

1. Address To Request Application Package:

This Cooperative Agreement project uses the Application Form HHS Office of Public Health and Science (OPHS) OPHS–1, Revised 8/2004, enclosed in the application packet. Many different programs funded through the HHS Public Health Service (PHS) use this generic form. Some parts of it are not required; applicants must fill out other sections in a fashion specific to the program. Instructions for filling out OPHS–1, Revised 8/2004 will be included in the application packet. These forms are also available from the following sites by downloading from *https://egrants.osophs.dhhs.gov* and clicking on Grant Announcements, or *http://www.grants.gov/*; or by writing to Ms. Karen Campbell, Director, Office of Grants Management, Office of Public Health and Science, U.S. Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; or by contacting the HHS/OPHS Office of Grants Management, at 1–(240) 453–8822. Please specify the HHS program(s) for which you are requesting an application kit.

ADDRESSES: Application kits may be requested from, and applications submitted to Karen Campbell, Director, Office of Grants Management, Office of Public Health and Science (OPHS), Department of Health and Human Services, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852.

2. Content and Form of Application Submission

Application Materials

A separate budget page is required for the budget year requested. Applicants must submit with the proposal a line-item budget (SF 424A) with coinciding justification to support each of the budget years. These forms will represent the full project period of Federal assistance requested. HHS will not favorably consider proposals submitted without a budget and justification for each budget year requested in the application. Specific instructions for submitting a detailed budget for this application appear in the application packet. If additional information and/or clarification are necessary, please contact the HHS/OPHS Office of Grants Management identified in Section VII of this announcement.

A Project Abstract submitted on 3.5 inch floppy disk must accompany all applications. The abstract must be typed, single-spaced, and not exceed two pages. Reviewers and staff will refer frequently to the information contained in the abstract, and therefore it should contain substantive information about the proposed projects in summary form. A list of suggested keywords and a format sheet for your use in preparing the abstract will be included in the application packet.

A Project Narrative must accompany all grant applications. In addition to the instructions provided in OPHS–1 (Rev 8/2004) for project narrative, the specific guidelines for the project narrative appear in the program guidelines. Format requirements are the same as for the Project Abstract Section; margins should be one inch at the top and one inch at the bottom and both sides; and typeset must be no smaller than 12 cpi, and not reduced. Applicants should type biographical sketches either on the appropriate form or on plain paper, and should not exceed two pages, with publications listed limited only to those that are directly relevant to this project.

Application Format Requirements

If applying on paper, the entire application may not exceed 80 pages in length, including theabstract, project and budget narratives, face page,

attachments, any appendices and letters of commitment and support. Applicants must number pages consecutively.

HHS/OGHA will deem as non-compliant applications submitted electronically that exceed 80 pages when printed and will return all non-compliant applications to the applicant without further consideration.

(a) *Number of Copies:* Please submit one (1) original and two (2) unbound copies of the application. Please do not bind or staple the application. Application must be single- sided.

(b) *Font:* Please use an easily readable serif typeface, such as Times Roman, Courier, or CG Times. Applicants must submit the text and table portions of the application in not less than 12-point and 1.0 line spacing. HHS/OGHA might return applications that do not adhere to 12-point font requirements.

(c) *Paper Size and Margins:* For scanning purposes, please submit the application on 8½″ x 11″ white paper. Margins must be at least one (1) inch at the top, bottom, left and right of the paper. Please left-align text.

(d) *Numbering:* Please number the pages of the application sequentially from page one (face page) to the end of the application, including charts, figures, tables, and appendices.

(e) *Names:* Please include the name of the applicant on each page.

(f) *Section Headings:* Please put all section headings flush left in bold type.

Application Format

An application for funding must consist of the following documents in the following order:

i. *Application Face Page:* Public Health Service (PHS) Application Form OPHS–1, provided with the application package. Prepare this page according to instructions provided in the form itself.

DUNS Number

An applicant organization is required to have a Data Universal Numbering System (DUNS) number in order to apply for a grant from the Federal Government. The DUNS number is a unique nine-character identification number provided by the commercial company, Dun and Bradstreet. There is no charge to obtain a DUNS number. Information about obtaining a DUNS number can be found at *https://www.dnb.com/product/eupdate/requestOptions.html* or call 1–866–705–5711. Please include the DUNS number next to the OMB Approval Number on the application face page. An application *will not* be reviewed without a DUNS number.

Additionally, the applicant organization will be required to register with the Federal Government's Central Contractor Registry (CCR) in order to do electronic business with the Federal Government. Information about registering with the CCR can be found at *http://www.hrsa.gov/grants/ccr.htm*.

Finally, an applicant applying electronically through Grants.gov is required to register with the Credential Provider for Grants.gov. Information about this requirement is available at *http://www.grants.gov/CredentialProvider*

An applicant applying electronically through the OPHS E-Grants System is required to register with the provider. Information about this requirement is available at *https://egrants.osophs.dhhs.gov*.

ii. *Table of Contents:* Provide a Table of Contents for the remainder of the application (including appendices), with page numbers.

iii. *Application Checklist:* Application Form OPHS–1, provided with the application package.

iv. *Budget:* Application Form OPHS–1, provided with the application package.

v. *Budget Justification:* The amount of financial support (direct costs) that an applicant is requesting from the Federal granting agency for the first year is to be entered on the Face Sheet of Application Form PHS 5161–1, Line 15a. The application should include funds for electronic mail capability unless access by Internet is already available. The amount of financial support (direct costs) entered on the SF 424 is the amount an applicant is requesting from the Federal granting agency for the project year.

Personnel Costs: Personnel costs should be explained by listing each staff member who will be supported from funds, name (if possible), position title, percent full time equivalency, annual salary, and the exact amount requested.

Fringe Benefits: List the components that comprise the fringe benefit rate, for example health insurance, taxes, unemployment insurance, life insurance, retirement plan, tuition reimbursement. The fringe benefits should be directly proportional to that portion of personnel costs that are allocated for the project.

Travel: List travel costs according to local and long distance travel. For local travel, the mileage rate, number of miles, reason for travel and staff member/consumers completing the travel should be outlined. The budget should also reflect the travel expenses associated with participating in meetings and other proposed trainings or workshops.

Equipment: List equipment costs and provide justification for the need of the equipment to carry out the programs goals. Extensive justification and a detailed status of current equipment must be provided when requesting funds for the purchase of computers and furniture items.

Supplies: List the items that the project will use. In this category, separate office supplies from medical and educational purchases. Office supplies could include paper, pencils, and the like; medical supplies are syringes, blood tubes, plastic gloves, *etc.*, and educational supplies may be pamphlets and educational videotapes. Remember, they must be listed separately.

Subcontracts: To the extent possible, all subcontract budgets and justifications should be standardized, and contract budgets should be presented by using the same object class categories contained in the Standard Form 424A. Provide a clear explanation as to the purpose of each contract, how the costs were estimated, and the specific contract deliverables.

Other: Put all costs that do not fit into any other category into this category and provide an explanation of each cost in this category. In some cases, grantee rent, utilities and insurance fall under this category if they are not included in an approved indirect cost rate.)

vi.*Staffing Plan and Personnel Requirements:* An applicant must present a staffing plan and provide a justification for the plan that includes education and experience qualifications and rationale for the amount of time being requested for each staff position. Position descriptions that include the roles, responsibilities, and qualifications of proposed project staff must be included in Appendix B. Copies of biographical sketches for any key employed personnel that will be assigned to work on the proposed project must be included in Appendix C.

vii. *Project Abstract:* Provide a summary of the application. Because the abstract is often distributed to provide information to the public and Congress, please prepare this so that it is clear, accurate, concise, and without reference to other parts of the application. It must include a brief description of the proposed grant project including the needs to be addressed, the proposed services, and the population group(s) to be served.

Please place the following at the top of the abstract:

- Project Title;
- Applicant Name;
- Address;

• Contact Phone Numbers (Voice, Fax);
• E-Mail Address; and,
• Web site Address, if applicable.

The project abstract must be single-spaced and limited to two pages in length.

viii. *Program Narrative:* This section provides a comprehensive framework and description of all aspects of the proposed program. It should be succinct, self-explanatory and well organized so that reviewers can understand the proposed project.

Use the following section headers for the Narrative:

Introduction

This section should briefly describe the purpose of the proposed project.

Work Plan

Describe the activities or steps that will be used to achieve each of the activities proposed in the methodology section. Use a time line that includes each activity and identifies responsible staff.

Resolution of Challenges

Discuss challenges that are likely to be encountered in designing and implementing the activities described in the Work Plan, and approaches that will be used to resolve such challenges.

Evaluation and Technical Support Capacity

Describe current experience, skills, and knowledge, including individuals on staff, materials published, and previous work of a similar nature.

Organizational Information

Provide information on the applicant agency's current mission and structure, scope of current activities, and an organizational chart, and describe how these all contribute to the ability of the organization to conduct the program requirements and meet program expectations.

ix. *Appendices:* Please provide the following items to complete the content of the application. Please note that these are supplementary in nature, and are not intended to be a continuation of the project narrative. Be sure each appendix is clearly labeled.

1. *Appendix A:* Tables, Charts, *etc.*

To give further details about the proposal.

2. *Appendix B:* Job Descriptions for Key Personnel.

Keep each to one page in length as much as is possible. Item 6 in the Program Narrative section of the PHS 5161–1 Form provides some guidance on items to include in a job description.

3. *Appendix C:* Biographical Sketches of Key Personnel.

Include biographical sketches for persons occupying the key positions described in Appendix B, not to exceed two pages in length. In the event that a biographical sketch is included for an identified individual who is not yet hired, please include a letter of commitment from that person with the biographical sketch.

4. *Appendix D:* Letters of Agreement and/or Description(s) of Proposed/Existing Contracts (project specific).

Provide any documents that describe working relationships between the applicant agency and other agencies and programs cited in the proposal. Documents that confirm actual or pending contractual agreements should clearly describe the roles of the subcontractors and any deliverable. Letters of agreements must be dated.

5. *Appendix E:* Project Organizational Chart.

Provide a one-page figure that depicts the organizational structure of the project, including subcontractors and other significant collaborators.

6. *Appendix F:* Other Relevant Documents.

Include here any other documents that are relevant to the application, including letters of supports. Letters of support must be dated.

3. Submission Dates & Times

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Web site Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5:00 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement using one of the electronic submission mechanisms specified below. All required hard-copy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later that 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hard copy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions Via the Grants.gov Web Site Portal

The Grants.gov Web site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov*.

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the Grants.gov Web site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All

required mail-in items must received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (eastern time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed ≥Invalid≥ by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard-copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard-copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Website Portal, and the required hard-copy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Electronic Submissions via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov*, or may be requested from the OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (*e.g.,* Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completedonline forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-in items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (eastern time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted. As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread. Applicants should submit their applications to the following address: Director, Office of Grants Management, Office of Public Health and Science, U.S. Department of Health and Human Services, 1101 Wootten Parkway, Suite 550, Rockville, MD 20852.

4. Intergovernmental Review

This program is not subject to the review requirements of Executive Order 12372, Intergovernmental Review of Federal Programs.

5. Funding Restrictions

Allowability, allocability, reasonableness, and necessity of direct costs that may be charged are outlined in the following documents: OMB–21 (Institutes of Higher Education); OMB Circular A–122 (Nonprofit Organizations) and 45 CFR Part 74, Appendix E (Hospitals). Copies of these circulars are available on the Internet at the following address: *http://www.whitehouse.gov/omb*. No pre-award costs are allowed.

6. Other Submission Requirements

N/A.

V. Application Review Information

1. Criteria

The application will be screened by OGHA staff for completeness and for responsiveness to the program guidance. The applicant should pay strict attention addressing these criteria, as they are the basis upon which applications will be judged. An application judged to be non-responsive or incomplete will be returned to the applicant without review.

An application that is complete and responsive to the guidance will be evaluated for scientific and technical merit by an appropriate peer review group specifically convened for this solicitation and in accordance with HHS policies and procedures. As part of the initial merit review, all applications will receive a written critique. All applications recommended for approval

will be discussed fully by the ad hoc peer review group and assigned a priority score for funding. Eligible applications will be assessed according the following criteria:

(1) Technical Approach (40 Points)

- The applicant's presentation of a sound and practical technical approach for executing the requirements with adequate explanation, substantiation and justification for methods for handling the projected needs of the partner institution.
- The successful applicant must demonstrate a clear understanding of the scope and objectives of the cooperative agreement, recognition of potential difficulties that could arise in performing the work required, presentation of adequate solutions, and understanding of the close coordination necessary between the HHS/OGHA, the International Partnership on Avian and Pandemic Influenza, United Nations agencies, and the WHO Secretariat.
- Applicants must submit a strategic plan that outlines the schedule of activities and expected products of the Group's work with benchmarks at months six and 12. The strategic plan should specifically address the expected progress of the Quality of Care program.

(2) Personnel Qualifications and Experience (20 Points)

- Project Leadership— For the technical and administrative leadership of the project requirements, successful applicants must demonstrate documented training, expertise, relevant experiences, leadership/management skills, and the availability of a suitable overall project manager and surrounding management structure to successfully plan and manage the project. The successful applicant will provide documented history of leadership in the establishment and management of training programs that involve training of health-care professionals in countries other than the United States. Expertise in maternal and child health care, including documented training, expertise, relevant experience, leadership skills, and medical expertise specific to maternal and child health. Documented managerial ability to achieve delivery or performance requirements as demonstrated by the proposed use of management and other personnel resources and to manage successfully the project, including subcontractor and/or consultant efforts, if applicable, as evidence by the management plan and demonstrated by previous relevant experience.
- Partner Institutions and other Personnel—Applicants should provide documented evidence of availability, training, qualifications, expertise, relevant experience, education and competence of the scientific, clinical, analytical, technical and administrative staff and any other proposed personnel (including partner institutions, subcontractors and consultants), to perform the requirements of the work activities as evidenced by resumes, endorsements and explanations of previous efforts.
- Staffing Plan—Applicants should submit a staffing plan for the conduct of the project, including the appropriateness of the time commitment of all staff and partner institutions, the clarity and appropriateness of assigned roles, and lines of authority. Applicants should also provide an organizational chart for each partner institution named in the application showing relationships among the key personnel.
- Administrative and Organizational Framework—Adequacy of the administrative and organizational framework, with lines of authority and responsibility clearly demonstrated, and adequacy of the project plan, with proposed time schedule for achieving objectives and maintaining quality control over the implementation and operation of the project. Adequacy of back-up staffing and the evidence that they will be able to function as a team. The framework should identify the institution that will assume legal and financial responsibility and accountability for the use and disposition of funds awarded on the basis of this RFA.

(3) Experience and Capabilities of the Organization (30 Points)

- Applicant should submit documented relevant experience of the organization in managing projects of similar complexity and scope of the activities.
- Clarity and appropriateness of lines of communication and authority for coordination and management of the project. Adequacy and feasibility of plans to ensure successful coordination of a multiple-partner collaboration.
- Documented experience recruiting qualified medical personnel for projects of similar complexity and scope of activities.

(4) Facilities and Resources (10 Points)

- Documented availability and adequacy of facilities, equipment and resources necessary to carry out the activities specified under Program Requirements.

VI. Award Administration Information

1. Award Notices

HHS/OGHA does not release information about individual applications during the review process until we have made final funding decisions. When HHS/OGHA has made these decisions, we will notify applicants by letter regarding the outcome of their applications. The official document to notify an applicant HHS/OGHA has approved and funded an application is the Notice of Award, which specifies to the recipient the amount of money awarded, the purpose of the agreement, the terms and conditions of the agreement, and the amount of funding, if any, the recipient will contribute to the project costs.

2. Administrative and National Policy Requirements

The regulations set out at 45 CFR parts 74 and 92 are the U.S. Department of Health and Human Services (HHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which governs awards to State and Local governments. Applicants funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 are available from the following Internet address: *http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html.*

3. Reporting

The projects is required to have an evaluation plan, consistent with the scope of the proposed project and funding level that conforms to the project's stated goals and objectives. The evaluation plan should include both a process evaluation to track the implementation of project activities and an outcome evaluation to measure changes in knowledge and skills that can be attributed to the project. Project funds may be used to support evaluation activities.

In addition to conducting their own evaluation of projects, the successful applicant must be prepared to participate in an external evaluation, to be supported by OGHA/HHS and conducted by an independent entity, to assess efficiency and effectiveness for the project funded under this announcement.

Within 30 days following the end of each of quarter, submit a performance report no more than ten pages in length must be submitted to OGHA/HHS. A sample quarterly performance report will be provided at the time of notification of award. At a minimum,

quarterly performance reports should include:

- Concise summary of the most significant achievements and problems encountered during the reporting period, *e.g.* number of training courses held and number of trainees.
- A comparison of work progress with objectives established for the quarter using the grantee's implementation schedule, and where such objectives were not met, a statement of why they were not met.
- Specific action(s) that the grantee would like the OGHA/HHS to undertake to alleviate a problem.
- Other pertinent information that will permit monitoring and overview of project operations.
- A quarterly financial report describing the current financial status of the funds used under this award. The awardee and OGHA will agree at the time of award for the format of this portion of the report.

Within 90 days following the end of the project period a final report containing information and data of interest to the Department of Health and Human Services, Congress, and other countries must be submitted to OGHA/HHS. The specifics as to the format and content of the final report and the summary will be sent to successful applicants. At minimum, the report should contain:

- A summary of the major activities supported under the agreement and the major accomplishments resulting from activities to improve mortality in partner country.
- An analysis of the project based on the problem(s) described in the application and needs assessments, performed prior to or during the project period, including a description of the specific objectives stated in the grant application and the accomplishments and failures resulting from activities during the grant period.

Quarterly performance reports and the final report may be submitted to: Mr. DeWayne Wynn, Grants Management Specialist, Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, phone (240) 453–8822.

A Financial Status Report (FSR) SF–269 is due 90 days after the close of each 12-month budget period and submitted to OPHS–Office of Grants Management.

VII. Agency Contacts

For assistance on administrative and budgetary requirements, please contact: Mr. DeWayne Wynn, Grants Management Specialist, Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, phone (240) 453–8822.

For assistance with questions regarding program requirements, please contact the following: David Smith, PhD, Office of Global Health Affairs, U.S. Department of Health and Human Services, 5600 Fishers Lane, Suite 18–101, Rockville, MD 20857; Phone Number: 1–301–443–1774.

VIII. Tips for Writing a Strong Application

Include DUNS Number. You must include a DUNS Number to have your application reviewed. HHS/OGHA *will not* review applications without a DUNS number. To obtain a DUNS number, go to *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

Keep your audience in mind. Reviewers will use only the information contained in the application to assess the application. Be sure the application and responses to the program requirements and expectations are complete and clearly written. Do not assume reviewers are familiar with the applicant organization. Keep the review criteria in mind when writing the application.

Start preparing the application early. Allow plenty of time to gather required information from various sources.

Follow the instructions in this guidance carefully. Place all information in the order requested in the guidance. If the applicant does not place information in the requested order, the application might receive a lower score.

Be brief, concise, and clear. Make your points understandable. Provide accurate and honest information, including candid accounts of problems and realistic plans to address them. If any required information or data is omitted, explain why. Make sure the information provided in each table, chart, attachment, *etc.*, is consistent with the proposal narrative and information in other tables.

Be organized and logical. Many applications fail to receive a high score because the reviewers cannot follow the thought process of the applicant or because parts of the application do not fit together.

Be careful in the use of appendices. Do not use the appendices for information that is required in the body of the application. Be sure to cross-reference all tables and attachments located in the appendices to the appropriate text in the application.

Carefully proofread the application. Misspellings and grammatical errors will impede reviewers in understanding the application. Be sure pages are numbered (including appendices), and follow page limits. Limit the use of abbreviations and acronyms, and define each one at its first use and periodically throughout the application.

Dated: September 26, 2006.

Sandra R. Manning,

Deputy Director for Operations, Office of Global Health Affairs, U.S. Department of Health and Human Services.

[FR Doc. E6–16181 Filed 9–29–06; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. This meeting is open to the public. A description of the Council's functions is included with this notice.

DATES: October 16, 2006, 8 a.m. to 5 p.m., and October 17, 2006, 8 a.m. to 4 p.m.

ADDRESSES: Howard University, Armour J. Blackburn University Center, 2397 Sixth Street, NW., Washington, DC 20059.

FOR FURTHER INFORMATION CONTACT: Dana Ceasar, Program Assistant, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 733E, Washington, DC 20201; (202) 690–2470 or visit the Council's Web site at *http://www.pacha.gov.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c)

promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services. The Council is composed of not more than 21 members. Council membership is determined by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The agenda for this Council meeting includes the following topics: HIV/AIDS among the African America/Latino communities, HIV/AIDS prevention, and international issues. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to three (3) minutes per speaker.

Public attendance is limited to space available and pre-registration is required. Any individual who wishes to participate should register at *http://www.pacha.gov.* Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate in the comment section when registering.

Dated: September 20, 2006.

Joseph Grogan,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. E6–16163 Filed 9–29–06; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Systems Research.

Date: October 19, 2006 (Open from 8 a.m. to 8:15 a.m. on October 19 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ), John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

2. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: October 19, 2006 (Open from 7:30 a.m. to 7:45 a.m. on October 19 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ), John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

3. *Name of Subcommittee:* Health Care Technology and Decisions Sciences.

Date: October 24, 2006 (Open from 8 a.m. to 8:15 a.m. on October 24 and closed for remainder of the meeting).

Place: Marriott Gaithersburg Washington Center Hotel, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

4. *Name of Subcommittee:* Health Care Research Training.

Date: October 24, 2006 (Open from 8 a.m. to 8:15 a.m. on October 24 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality (AHRQ), John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: September 20, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–8382 Filed 9–29–06; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel: Monitoring and Treatment Programs for the World Trade Center, Program Announcement Number (PA) 04–038.

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 following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Monitoring and Treatment Programs for the World Trade Center, PA 04–038.

Time and Date: 8 a.m.–3 p.m., October 23, 2006 (Closed).

Place: Embassy Suites, 7001 Yampa Street, Denver, Colorado 80249, Telephone 303.574.3000.

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 research grant applications in response to Monitoring and Treatment Programs for the World Trade Center, PA 04–038.

For Further Information Contact: M. Chris Langub, Designated Federal Officer, 1600 Clifton Road, NE., MS E74, Atlanta, GA 30333, telephone 404.498.2543.

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: September 25, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–16234 Filed 9–29–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Program Peer Review Subcommittee of the Board of Scientific Counselors (BSC), Centers for Disease

Control and Prevention (CDC), National Center for Environmental Health/ Agency for Toxic Substances and Disease Registry (NCEH/ATSDR): Teleconference.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC, NCEH/ATSCR announces the following subcommittee meeting:

Name: Program Peer Review Subcommittee (PPRS).

Time and Date: 10:30 a.m.–12:30 p.m. Eastern Daylight Savings Time, October 16, 2006.

Place: The teleconference will originate at NCEH/ATSDR in Atlanta, Georgia. To participate, dial (877) 315–6535 and enter conference code 383520.

Purpose: Under the charge of the BSC, NCEH/ATSDR, the PPRS will provide the BSC, NCEH/ATSDR with advice and recommendations on NCEH/ATSDR program peer review. They will serve the function of organizing, facilitating, and providing a long-term perspective to the conduct of NCEH/ ATSDR program peer review.

Matters to be Discussed: A review of the previous meeting; an update on the planning of the Site Specific Activities Peer Review; a discussion of Terrorism Preparedness and Emergency Response Peer Review in February 2007, to include: revisions to the review process, revisions to the questionnaires, areas of expertise required for the review, and nominations for PPRS panel member, chairperson, and peer reviewers; and review the revised schedule for Program Peer Reviews.

Agenda items are subject to change as priorities dictate.

Supplementary Information: This meeting is scheduled to begin at 10:30 a.m. Eastern Daylight Savings Time. To participate, please dial (877) 315–6535 and enter conference code 383520. Public comment period is scheduled for 11:10–11:20 a.m.

For Further Information Contact: Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, MS E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404)498–0622.

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 NCEH/ATSDR.

Dated: September 25, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–16189 Filed 9–29–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Center for Medicare & Medicaid Services (CMS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled, ''Rural Hospice Demonstration (RHD), System No. 09–70–0563.'' The program is mandated by § 409 of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) (Public Law (Pub. L.) 108–173), which was enacted into law on December 8, 2003, and amended Title XVIII of the Social Security Act (the Act). Section 409 authorizes the Secretary of HHS (the Secretary) to conduct a demonstration project for the delivery of hospice care to Medicare beneficiaries in rural areas. Under the demonstration, Medicare beneficiaries who are unable to receive hospice care at home for lack of an appropriate caregiver are provided such care in a facility of 20 or fewer beds that offers, within its walls, the full range of services provided by hospice programs.

In order for a hospice organization or agency to participate in this demonstration, it must be Medicare certified and meet all of the Medicare Conditions of Participation as described in subparts C (General Provisions), D (Core Services), and E (Other Services) of 42 CFR 418, except it shall not be required to offer services outside the facility or meet the 20 percent inpatient cap requirements of section 1861(dd)(2)(A)(iii) of the Act.

The purpose of this system is to collect and maintain a person-level view of identifiable data of Medicare beneficiaries who participate in the rural hospice demonstrations. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant, or grantee; (2) assist another Federal or State agency with information to contribute to the accuracy of CMS's proper payment of Medicare benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse in certain Federally-funded health benefits programs. We have provided background information about this system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

DATES: *Effective Date:* CMS filed a SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 26, 2006 . To ensure that all parties have adequate time in which to comment, the new system will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comment to the CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location by appointment during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Cindy Massuda, Project Officer, Division of Deliver System Demonstration, Office of Research Development & Information, Mail Stop C4–18–03, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849. She can be reached by telephone at 410–786–0652 or e-mail *Cindy.Massuda@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The demonstration will be offered to up to three hospice programs and will not exceed a period of 5 years. The demonstration will test whether provisions of hospice services provided by a demonstration hospice program to Medicare beneficiaries who lack an appropriate caregiver and who reside in rural areas results in wider access, improved hospice services, benefits to the community, and a sustainable pattern of care. Hospice provides palliative care to individuals who have a terminal illness with a prognosis of 6 months or less. The care is provided typically in the individual's home or place of residence with family members present.

Individuals who lack family or someone to serve as the primary caregiver need proportionately more support from hospice staff. Due to long distances and difficult terrain, it can be particularly difficult to provide the Medicare hospice benefit efficiently in rural areas. There may be situations where the hospice benefit could be provided to beneficiaries who would not otherwise be able to receive these services if the location of hospice care is altered.

This demonstration will allow a hospice with up to 20 beds to provide all levels of hospice services within its walls to individuals who reside in rural areas and lack an appropriate caregiver, while not having to provide services outside of the hospice facility or comply with the 20-percent cap on inpatient care days.

While the demonstration provider will not have to meet the limit on inpatient care days or provide care outside of the facility, it will not alter the level of care requirements for general inpatient care. In order to provide general inpatient care to hospice patients, a hospice participating in the demonstration must assure that the need for general inpatient care is met according to Medicare guidelines. The demonstration will test whether hospice services provided by a facility that does not meet the limit on inpatient care days or provide services outside of the facility for hospice individuals residing in rural areas who lack an appropriate caregiver results in wider access, improved hospice services, benefits to the rural community, and a sustainable pattern of care.

The demonstration is designed for a demonstration hospice to provide the full range of services within its facility to Medicare beneficiaries who reside in rural areas and lack an appropriate caregiver. If a demonstration hospice provides care to any patient who either lives outside a rural area or has an appropriate caregiver, then the hospice must comply with all of Medicare hospice requirements at § 1861(dd) of the SSA for these patients since they are not considered part of the demonstration.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for SOR

The statutory authority for this system is given under the provisions of § 409 of the Medicare Prescription Drug Improvement, and Modernization Act of 2003 and § 1861(dd) of the Social Security Act. This program is codified at Title 42 United States Code 1395x (dd).

B. Collection and Maintenance of Data in the System

This system will collect and maintain individually identifiable and other data collected on Medicare beneficiaries and their providers who provide service to such beneficiaries who participate in this demonstration. Data will be collected from Medicare administrative and claims records, patient medical charts, physician records, and via survey instruments administered to beneficiaries and providers. The collected information will include, but is not limited to Medicare claims and eligibility data, name, address, telephone number, health insurance claims number, race/ethnicity, gender, date of birth, provider name, unique provider identification number, medical record number, as well as clinical, demographic, health/well-being, family and/or caregiver contact information, and background information relating to Medicare issues.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The Government will only release RHD information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of RHD.

CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; *e.g.*, to collect and maintain a person-level view of identifiable data of Medicare beneficiaries who participate in the rural hospice demonstrations.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy, at the earliest time, all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only

in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To assist another Federal or State agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/State Medicaid programs within the State.

Other Federal or State agencies, in their administration of a Federal health program, may require RHD information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

3. To assist an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The RHD data will provide for research or support of evaluation projects and a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policies that govern their care.

4. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

5. To assist a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual, grantee, cooperative agreement or consultant relationship with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse. CMS occasionally contracts out certain of its functions or makes grants or cooperative agreements when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, grantee, consultant or other legal agent whatever information is necessary for the agent to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the agent from using or disclosing the information for any purpose other than that described in the contract and requiring the agent to return or destroy all information.

6. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, and abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such programs.

Other agencies may require RHD information for the purpose of combating fraud, waste, and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that because of the small size, use of this information could allow for the deduction of the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors of such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and

Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in this system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: September 19, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0563

SYSTEM NAME:

''Rural Hospice Demonstration (RHD),'' HHS/CMS/ORDI.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850, and at various contractor locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will collect and maintain individually identifiable and other data collected on Medicare beneficiaries and their providers who provide service to such beneficiaries who participate in this demonstration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data will be collected from Medicare administrative and claims records, patient medical charts, physician records, and via survey instruments administered to beneficiaries and providers. The collected information will include, but is not limited to Medicare claims and eligibility data, name, address, telephone number, health insurance claims number, race/ethnicity, gender, date of birth, provider name, unique provider identification number, medical record number, as well as clinical, demographic, health/well-being, family and/or caregiver contact information, and background information relating to Medicare issues.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for this system is given under the provisions of § 409 of the Medicare Prescription Drug Improvement, and Modernization Act of 2003 and § 1861(dd) of the Social Security Act. This program is codified at Title 42 United States Code 1395x (dd).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain a person-level view of identifiable data of Medicare beneficiaries who participate in the rural hospice demonstrations. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, consultant, or grantee; (2) assist another Federal or State agency with information to contribute to the accuracy of CMS's proper payment of Medicare benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support litigation involving the agency; and (5) combat fraud, waste, and abuse in certain Federally-funded health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To assist another Federal or State agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/State Medicaid programs within the State.

3. To support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease, disability, or quality care projects, the restoration or maintenance of health, and payment related projects.

4. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. any employee of the agency in his or her official capacity, or

c. any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

5. To assist a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits

program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such program.

6. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, and abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, and abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures.

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that because of the small size, use of this information could allow for the deduction of the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic media.

RETRIEVABILITY:

The collected data are retrieved by an individual identifier; *e.g.,* beneficiary name or HICN, and unique provider identification number.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain information for a total period not to exceed 25 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Deliver Systems Demonstration, Office of Research Development and Information, Mail Stop C4–18–03, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, provider's tax identification number, national provider number, and for verification purposes, or the subject individual's name (woman's maiden name, if applicable), HICN, and/or SSN (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

Information maintained in this system will be collected from physicians volunteering to participate in the RHD. Additional data will be collected from Medicare claims payment records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–16107 Filed 9–29–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0211]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Proposed Collection; Comment Request; Guidance for Industry on Submitting and Reviewing Complete Responses to Clinical Holds

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 November 1, 2006.

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.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

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.

Guidance for Industry on Submitting and Reviewing Complete Responses to Clinical Holds—(OMB Control Number 0910–0445—(Extension)

Section 117 of the Food and Drug Administration Modernization Act (Public Law 105–115), signed into law by the President on November 21, 1997, provides that a written request to FDA from the applicant of an investigation that a clinical hold be removed shall receive a decision in writing, specifying the reasons for that decision, within 30 days after receipt of such request. A clinical hold is an order issued by FDA to the applicant to delay a proposed clinical investigation or to suspend an ongoing investigation for a drug or biologic. An applicant may respond to a clinical hold.

Under section 505(i)(3)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(3)(C)), any written request to FDA from the sponsor of an investigation that a clinical hold be removed must receive a decision, in writing and specifying the reasons, within 30 days after receipt of the request. The request must include sufficient information to support the removal of the clinical hold.

In the **Federal Register** of May 14, 1998 (63 FR 26809), FDA published a notice of availability of a guidance that described how applicants should submit responses to clinical holds so that they may be identified as complete responses and the agency can track the time to respond.

FDA issued a revised guidance in October 2000 which states that FDA will respond in writing within 30-calendar days of receipt of a sponsor's request to release a clinical hold and a complete response to the issue(s) that led to the clinical hold. An applicant's complete response to an investigational new drug (IND) clinical hold is a response in which all clinical hold issues identified in the clinical hold letter have been addressed.

The guidance requests that applicants type ''Clinical Hold Complete Response'' in large, bold letters at the top of the cover letter of the complete response to expedite review of the response. The guidance also requests that applicants submit the complete response letter in triplicate to the IND, and that they fax a copy of the cover letter to the FDA contact listed in the clinical hold letter who is responsible for the IND. The guidance requests more than an original and 2 copies of the cover letter in order to ensure that the submission is received and handled in a timely manner.

Based on data concerning the number of complete responses to clinical holds received by the Center for Drug Evaluation and Research (CDER) in 2004 and 2005, CDER estimates that approximately 88 responses are submitted annually from approximately 67 applicants, and that it takes approximately 284 hours to prepare and submit to CDER each response.

Based on data concerning the number of complete responses to clinical holds received by the Center for Biologics Evaluation and Research (CBER) in 2004 and 2005, CBER estimates that approximately 92 responses are submitted annually from approximately 60 applicants, and that it takes approximately 284 hours to prepare and submit to CBER each response.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Complete Responses to Clinical Holds	No. of Respondents	No. of Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Hours
CDER	67	.76	88	284	24,992
CBER	60	1.53	92	284	26,128
Total					51,120

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

In the **Federal Register** of May 25, 2006 (71 FR 30142), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

Dated: September 26, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–16225 Filed 9–29–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0382]

Agency Information Collection Activities; Proposed Collection; Comment Request; Postmarket Surveillance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for Postmarket Surveillance under 21 CFR part 822.

DATES: Submit written or electronic comments on the collection of information by December 1, 2006.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Postmarket Surveillance—21 CFR Part 822 (OMB Control Number 0910–0449)—Extension

Section 522(a) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 360(l)) authorizes FDA to require manufacturers to conduct postmarket surveillance of any device that meets the criteria set forth in the statute.

The postmarket surveillance (PS), regulation establishes procedures that FDA uses to approve and disapprove PS plans. The regulation provides specific, clear, and flexible instructions to manufacturers so they know what information is required in a postmarket surveillance plan submission. FDA reviews submissions in accordance with part 822 (21 CFR part 822) in §§ 822.15 to 822.18 of the regulation, which describe the grounds for approving or disapproving a PS plan. If this information is not collected, FDA would not be able to ensure that the PS plan could result in the collection of useful data which could reveal unforeseen adverse events or other information necessary to protect the public health.

Respondents to this collection of information are those manufacturers who require postmarket surveillance of their products.

FDA estimates the burden of this collection of information as follows:

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
822.9, 822.10	5	1	5	120	600
822.21	3	1	3	40	120
822.26	1	1	1	8	8
822.27	1	1	1	40	40
822.28	1	1	1	40	40
822.29	1	1	1	120	120
822.30	1	1	1	40	40
822.34	1	1	1	20	20
822.38	10	2	20	120	2,400
Total					3,338

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
822.31	10	1	10	20	200
822.32	30	1	30	10	300
Total					500

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that, based on current staffing and resources and experience with five actual postmarket surveillance actions over the past 3 years, five PS actions will be issued for generic devices, comprised of approximately five manufacturers. Each manufacturer will be required to submit a PS plan (§§ 822.9 and 822.10) and interim and final reports on the progress of the PS (§ 822.38). FDA anticipates that, on a case-by-case basis, requests for additional information may be made from a manufacturer. FDA expects that a small number of respondents will propose changes to their PS plans (§ 822.21), request a waiver of a specific requirement of this regulation (§ 822.29), or request exemption from the requirement to conduct PS of their device (§ 822.30). FDA's experience has

shown that a few respondents will go out of business (§ 822.26) or cease marketing the device subject to PS (§ 822.28) each year. In addition, manufacturers must certify transfer of records when ownership changes § 822.34.

FDA expects that at least some of the manufacturers will be able to satisfy the PS requirement using information or data they already have. For purposes of calculating burden, however, FDA has assumed that each PS order can only be satisfied by a 3-year clinically-based PS plan, using three investigators. These estimates are based on FDA's knowledge and experience with limited implementation of section 522 under the Safe Medical Devices Act of 1990. Therefore, FDA would expect that the recordkeeping requirements would apply to a maximum of 10 manufacturers (3 to 4 added each year) and 30 investigators (three per PS plan). After 3 years, FDA would expect these numbers to remain level as the PS plans conducted under the earliest orders reach completion and new orders are issued.

Dated: September 26, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–16231 Filed 9–29–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting and Nonvoting Consumer Representative Members on Public Advisory Committees and Panels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting and nonvoting consumer representatives to serve on its advisory committees/panels that are under the purview of the Office of the Commissioner, the Center for Drug Evaluation and Research, the Center for Devices and Radiological Health, and the National Center for Toxicological and Research (NCTR).

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on its advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2006. Because vacancies occur on various dates throughout the year, there is no cutoff date for the receipt of nominations.

ADDRESSES: Send all nominations and curricula vitae to the following contact persons listed in table 1 of this document:

TABLE 1.

Contact Person	Committee/Panel
Jan Johannessen, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, rm. 14B–08, Rockville, MD 20857, 301–827–6687, e-mail: *jan.johannessen@fda.hhs.gov*	Pediatric Advisory Committee
Igor Cerny, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20857, 301–827–6763, e-mail: *igor.cerny@fda.hhs.gov*	Arthritis Advisory Committee
Collin L. Figueroa, Center for Devices and Radiological Health (HFZ–342), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850	Device Good Manufacturing Practice Advisory Committee
Geretta Wood, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., rm. 110D, Rockville, MD 20850, 301–594–2022, x 133, e-mail: *geretta.wood@fda.hhs.gov*	General Hospital and Personal Use Devices Panel, Gastroenterology-Urology Devices Panel, General and Plastic Surgery Devices Panel, and the Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee
Leonard M. Schechtman, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, rm. 16–85, Rockville, MD 20857, 301–827–6696, e-mail: *leonard.schechtman@fda.hhs.gov*	Science Advisory Board to NCTR

FOR FURTHER GENERAL INFORMATION CONTACT: Doreen Brandes, Office of the Commissioner (HF–4), Food and Drug Administration, 5600 Fishers Lane, rm. 15A–12, Rockville, MD 20853, 301–827–1220, e-mail *doreen.brandes@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and nonvoting consumer representatives for the vacancies listed in table 2 of this document.

TABLE 2.

Committee/Panel Expertise Needed	Current and Upcoming Vacancies	Approximate Date Needed
Pediatric Advisory Committee—knowledgeable in pediatric research, pediatric subspecialties, statistics, and/or biomedical ethics	1—Voting Consumer Representative	Immediately
Arthritis Advisory Committee—knowledgeable in the fields of arthritis, rheumatology, orthopedics, epidemiology or statistics, analgesics, and related specialties	1—Voting Consumer Representative	Immediately

TABLE 2.—Continued

Committee/Panel Expertise Needed	Current and Upcoming Vacancies	Approximate Date Needed
Certain Panels of the Medical Devices Advisory Committee		
Anesthesiology and Respiratory Therapy Devices Panel—anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia	1—Nonvoting Consumer Representative	Immediately
General Hospital and Personal Use Devices Panel—internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, bio-medical engineers, or microbiologists/infection control practioners or experts	1—Nonvoting Consumer Representative	Immediately
Gastroenterology-Urology Devices Panel—gastroenterologists, urologists, and nephrologists	1—Nonvoting Consumer Representative	January 1, 2007
General and Plastic Surgery Devices Panel—surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic, and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians	1—Nonvoting Consumer Representative	Immediately
Science Advisory Board to NCTR—toxicologists, chemists, or public health background as it relates to foods, drugs, etc.	1—Voting Consumer Representative	July 1, 2007

I. Functions

A. Pediatric Advisory Committee

The Committee advises and makes recommendations to the Commissioner of Food and Drugs (the Commissioner) regarding the following topics: (1) Pediatric research conducted under sections 351, 409I, and 499 of the Public Health Service Act (42 U.S.C. 262, 284m, and 290b) and sections 501, 502, 505, 505A, and 505B of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351, 352, 355, 355a, and 355c); (2) identification of research priorities related to pediatric therapeutics and the need for additional treatments of specific pediatric diseases or conditions; (3) the ethics, design, and analysis of clinical trials related to pediatric therapeutics; (4) pediatric labeling disputes as specified in section 3 of the Best Pharmaceuticals for Children Act (BPCA) (Public Law 107–109); (5) pediatric labeling changes as specified in section 5 of the BPCA; (6) adverse event reports for drugs granted pediatric exclusivity and any safety issues that may occur as specified in section 17 of the BPCA; (7) any other pediatric issue or pediatric labeling dispute involving FDA regulated products; (8) research involving children as subjects as specified in 21 CFR 50.54; and (9) any other matter involving pediatrics for which FDA has regulatory responsibility.

B. Arthritis Advisory Committee

The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases and makes appropriate recommendations to the Commissioner.

C. Certain Panels of the Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions the act envisions for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises the Commissioner regarding recommended classification or reclassification of devices into one of three regulatory categories, advises on any possible risks to health associated with the use of devices, advises on formulation of product development protocols, reviews premarket approval applications for medical devices, reviews guidelines and guidance documents, recommends exemption of certain devices from application of portions of the act, advises on the necessity to ban a device, and responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

D. NCTR

The Science Advisory Board to the committee is responsible for examining the biological effects of potentially toxic substances found in the environment through fundamental investigations aimed at understanding the mechanisms of actions of those substances in animals and developing a better understanding of what these data in animals mean for man.

II. Criteria for Members

Persons nominated for membership as consumer representatives on the committees/panels must meet the following criteria: (1) Demonstrate ties to consumer and community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representatives must be able to represent the consumer perspective on issues and actions before the advisory committee, serve as liaisons between the committee and interested consumers, associations, coalitions, and consumer organizations, and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and consumer advocacy groups. The organizations have the responsibility of recommending candidates of the agency's selection.

IV. Nomination Procedures

All nominations must include a cover letter, a curriculum vitae or resume (that includes the nominee's office address, telephone number, and e-mail address), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation. Nominations will specify the advisory panel(s) or committee(s) for which the nominee is recommended. Nominations will include confirmation that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee if selected, and appears to have no conflict of interest that would preclude membership.

Any interested person or organization may nominate one or more qualified persons for membership as consumer representatives on one or more of the advisory committees/panels. Self-nominations are also accepted. Potential candidates will be required to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of a conflict of interest. The nomination should specify the committee(s)/panel(s) of interest. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: September 25, 2006.

Randall Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–16216 Filed 9–29–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0050]

Determination of Regulatory Review Period for Purposes of Patent Extension; BYETTA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for BYETTA 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 that 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.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

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 BYETTA (exenatide injection). BYETTA is indicated as adjunctive therapy to improve glycemic control in patients with type 2 diabetes mellitus who are taking metformin, a sulfonylurea, or a combination of metformin and a sulfonylurea but have not achieved adequate glycemic control. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for BYETTA (U.S. Patent No. 5,424,286) from Amylin Pharmaceuticals, Inc., 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 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of BYETTA represented the first permitted commercial marketing or use of the product. Shortly 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 BYETTA is 2,271 days. Of this time, 1,968 days occurred during the testing phase of the regulatory review period, while 303 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*: February 10, 1999. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 10, 1999.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: June 30, 2004. The applicant claims June 29, 2004, as the date the new drug application (NDA) for BYETTA (NDA 21–773) was initially submitted. However, FDA records indicate that NDA 21–773 was submitted on June 30, 2004.

3. *The date the application was approved*: April 28, 2005. FDA has verified the applicant's claim that NDA 21–773 was approved on April 28, 2005.

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 1,286 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 December 1, 2006. 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

April 2, 2007. 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.

Dated: September 1, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–16086 Filed 9–29–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0008]

Determination of Regulatory Review Period for Purposes of Patent Extension; DRAXXIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DRAXXIN 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 animal 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.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

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 animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal 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 animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product DRAXXIN (tulathromycin). DRAXXIN is indicated for control of respiratory disease in cattle at high risk of developing bovine respiratory disease (BRD) and for treatment of BRD associated with *Mannheimia haemolytica*, *Pasteurella multocida*, and *Histophilus somni*. It is also indicated for the treatment of swine respiratory disease associated with *Actinobacillus pleuropneumoniae*, *P. multocida*, *Bordetella bronchiseptica*, and *Haemophilus parasuis*. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DRAXXIN (U.S. Patent No. 6,420,536) from Pfizer, Inc., 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 24, 2006, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of DRAXXIN represented the first permitted commercial marketing or use of the product. Shortly 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 DRAXXIN is 2,451 days. Of this time, 2,414 days occurred during the testing phase of the regulatory review period, while 37 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective*: September 9, 1998. FDA has verified the applicant's claim that the date the investigational new animal drug application (INADA) became effective was on September 9, 1998.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act*: April 18, 2005. FDA has verified the applicant's claim that the new animal drug application (NADA) for DRAXXIN (NADA 141–244) was initially submitted on April 18, 2005.

3. *The date the application was approved*: May 24, 2005. FDA has verified the applicant's claim that NADA 141–244 was approved on May 24, 2005.

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 360 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 December 1, 2006. 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 April 2, 2007. 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.

Dated: September 1, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–16087 Filed 9–29–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0204]

Determination of Regulatory Review Period for Purposes of Patent Extension; NATRECOR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for NATRECOR 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 that 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.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

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 drug 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 NATRECOR (nesiritide). NATRECOR is indicated for the intravenous treatment of patients with acutely decompensated congestive heart failure who have dyspnea at rest or with minimal activity. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for NATRECOR (U.S. Patent No. 5,114,923) from Scios, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 19, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of NATRECOR represented the first permitted commercial marketing or use of the product. Shortly 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 NATRECOR is 2,790 days. Of this time, 1,588 days occurred during the testing phase of the regulatory review period, while 1,202 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*: December 22, 1993. The applicant claims November 22, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 22, 1993, 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 27, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for NATRECOR (NDA 20–920) was initially submitted on April 27, 1998.

3. *The date the application was approved*: August 10, 2001. FDA has verified the applicant's claim that NDA 20–920 was approved on August 10, 2001.

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 5 years 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 December 1, 2006. 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 April 2, 2007. 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.

Dated: September 1, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–16091 Filed 9–29–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0443]

Guidance for Industry on Quality Systems Approach to Pharmaceutical Current Good Manufacturing Practice Regulations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Quality Systems Approach to Pharmaceutical Current Good Manufacturing Practice Regulations.'' This guidance explains FDA's current thinking regarding advances that have been made in the quality and manufacturing sciences since the current good manufacturing practice (CGMP) regulations were issued in 1978. The guidance describes the key elements of a robust quality systems model and shows how persons implementing such a model can achieve compliance with the CGMP regulations.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT:

Monica Caphart, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 11919 Rockville Pike, Rockville, MD 20852, 301–827–9047;

Robert Sausville, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6205;

June Liang, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–8789; or

Patricia Maroney Benassi, Office of Regulatory Affairs (HFC–240), 15800 Crabbs Branch Way, Rockville MD 20855, 240–632–6819.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Quality Systems Approach to Pharmaceutical Current Good Manufacturing Practice Regulations.'' This guidance was developed by the quality systems working group formed as part of the Pharmaceutical CGMPs for the 21st Century: A Risk Based Approach initiative (the initiative) now the Council on Pharmaceutical Quality. The guidance is intended to encourage the use of modern quality management system principles by the regulated industry and foster innovation and continuous improvements in pharmaceutical manufacturing. The initiative was announced in August 2002 (*http://www.fda.gov/cder/gmp/2ndprogressrept_plan.htm*). Among the many issues identified at that time were: (1) The increase in the number of pharmaceutical products and in the role of medicines in health care; (2) the decrease in the frequency of FDA manufacturing inspections resulting from fewer resources available for pharmaceutical manufacturing inspections; (3) FDA's increasing experience with, and lessons learned from, various approaches to the regulation of product quality; (4) advances in the pharmaceutical sciences and manufacturing technologies; (5) the increasing application of biotechnology in drug discovery and manufacturing; (6) advances in the science and management of quality; and (7) the globalization of the pharmaceutical industry.

At the outset, the agency established a set of guiding principles for the initiative:

- Maintain a risk-based orientation,
- Policies and standards must be science-based,
- The agency's orientation must be toward integrated quality systems,
- International cooperation is very important, and
- Protection of the public health must remain the top priority.

The initiative's announcement stated that 21 CFR parts 210, 211, 600, and 610 are flexible and will allow the agency to embark on a science-based risk management approach to CGMPs. This guidance, developed by a cross-center working group established by the initiative, is key in achieving the agency's goals. By showing how modern quality systems approaches relate to the existing CGMP regulations, the agency can help manufacturers meet the requirements of the agency's CGMPs while using a robust quality systems approach to the production of human and animal medical products. Such a comprehensive approach should foster flexibility and allow for continued innovation, while maintaining the principles of the CGMP regulations.

On October 4, 2004, FDA issued a draft of this guidance (69 FR 59256). Comments were received and considered carefully as the agency finalized the guidance. No substantive changes were made to the final guidance, although a number of clarifying edits were made throughout the guidance based on the comments received. In addition, the reference list and the graphic depicting a quality management systems approach were updated.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on a quality systems approach to pharmaceutical CGMP regulations. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: September 7, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–16215 Filed 9–29–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notification of a Class Deviation of Grants Policy Directive Part 2.04

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice.

SUMMARY: In accordance with the Grants Policy Directive Part 1.03, the Office of Health Information Technology (OHIT) has been granted a class deviation from the competition requirements contained in the Grants Policy Directive Part 2.04 to provide an additional year of funding without competition for Health Center Controlled Network (HCCN) Initiatives funded under Section 330 of the Public Health Service Act, as amended.

FOR FURTHER INFORMATION CONTACT: Susan Lumsden, Director, Division of Health Information Technology State and Community Assistance, Office of Health Information Technology, Health Resources and Services Administration, 5600 Fishers Lane, 7C–22, Rockville, Maryland 20857; telephone number: 301–594–4472; fax number: 301–443–1330.

SUPPLEMENTARY INFORMATION: In accordance with Public Health Service Act, Title III, Section 330(e)(1)(C), 42 U.S.C.254b (as amended).

Background

OHIT serves as the HRSA Administrator's principal advisor for promoting the adoption of and implementing health care information technology for the medically uninsured, underserved and other vulnerable populations, ensuring that key issues affecting the public and private adoption of health information technology are addressed (*e.g.*, privacy and security issues, standardization, and interoperability). The HCCNs are key partners in enabling HRSA to help adopt and implement the President's Health Information Technology Initiative in the safety net community. The HCCNs support the creation, development, and operation of networks of safety net providers to ensure access to health care for the medically underserved populations through the enhancement of health center operations. The HCCNs routinely perform core business functions for their safety net members across their marketplace, State, or region. The core business functions range from electronic health records, credentialing and privileging programs, utilization review and management, and clinical quality improvement. They provide these functions at or below marketplace cost to their members to increase efficiencies, reduce costs, and improve health care quality for underserved and uninsured populations. As such, the HCCNs are key to achieving the President's goal of assuring that every American in the Nation will have an electronic health record by 2014.

Justification for the Exception to Competition

The creation of OHIT was part of HRSA's new priorities related to HIT and it is necessary that HRSA have an opportunity to ensure that its new HIT strategy and resources are reflected in its grant programs. Because OHIT was just established on December 27, 2005, and only became fully staffed in May 2006, there has been inadequate time to develop a new strategy to promote HIT in the safety net community and to establish funding priorities that are in line with the new office's goals.

The OHIT has granted 18 HCCN grants a one-time 12-month extension (with funds) of the current budget period, which expires August 31, 2006. This will avoid disruption of the HCCNs infrastructure and any impairment to the accomplishment of their work plans that would likely result from a competitive reallocation of funds without careful planning and advanced notice. All future funding for these activities will be based on a full and open competition that will focus on the most effective utilization of available resources in support of the Administration's new HIT objectives.

Grantee name	State	12 month extension
South Cove CHC, Inc.	MA	$86,788
SW Virginia Community Health System	VA	57,859
Keystone Rural Health Center	PA	70,611
Aaron E. Henry CHC	MS	57,859
Cook Area Health Services	MN	62,487
Horizon Health Care, Inc.	SD	86,788
Mariposa Community Health Center	AZ	57,859
Asian Health Services	CA	86,788
Southwest Virginia Community Health	VA	167,742
Health Choice Network	FL	173,576
Neighborhood Health Care Network	MN	173,576
Central Oklahoma Integrated Network System	OK	88,900
Colorado Community Managed Care Network	CO	128,646
Community Health Center Network	CA	173,576
Klamath Health Partnership	OR	173,576
Collier Health Services, Inc.	FL	82,237
Wasatch Homeless Health Care, Inc.	UT	159,111
Oregon Primary Care Association	OR	162,022
		2,050,000

Dated: August 30, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. E6–16088 Filed 9–29–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable le accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: October 25, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: A Report of the Director addressing OAR initiatives. The topic of the meeting will focus on the newly restructured NIH-Sponsored AIDS Clinical Trials Networks as a national resource.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Rockville, MD 20852.

Contact Person: Christina Brackna, Executive Secretary, Office of Aids Research, Office of the Director, NIH, 2 Center Drive, MSC 0255, Building 2, Room 4W15, Bethesda, MD 20892, (301) 402–3555, *cm53v@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/od/oar/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8412 Filed 9–29–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topic 213 Phase II ''Portable e-Technology Tools For Real-Time Energy Balance Research''

Date: October 26, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIH Events Management, Executive Plaza North, 6130 Executive Boulevard, Conference Room C, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marvin L. Salin, PhD, Scientific Review Administrator, National Cancer Institute, Special Review and Logistics Branch, Division of Extramural Activities, 6116 Executive Boulevard, Room 7073, MSC 8329, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8409 Filed 9–29–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of 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 meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: October 23, 2006.

Open: October 23, 2006, 8 a.m.–4:30 p.m.

Agenda: Promoting Healthy Lifestyles to Reduce the Risk of Cancer.

Place: University of Kentucky Markey Cancer Center, 401 Hilltop Avenue, W.T. Young Library, Room 1–62, Lexington, KY 40506.

Closed: October 23, 2006, 4:30 p.m.–8:30 p.m.

Agenda: The Panel will discuss the Promoting Healthy Lifestyles to Reduce the Risk of Cancer and discuss potential topics for the 2007/2008 series.

Place: University of Kentucky Markey Cancer Center, 401 Hilltop Avenue, W.T. Young Library, Room 1–62, Lexington, KY 40506.

Contact Person: Abby Sandler, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, Building 6116, Room 212, 6116 Executive Boulevard, Bethesda, MD 20892, 301–451–9399.

Any interested person may file written comments with the committee by forwarding the comments to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.382, Cancer Construction; 93.393, Cancer Cause and Prevention

Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396 Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8410 Filed 9–29–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical Research II.

Date: November 9, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Laurie Friedman Donze, PhD., Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Dated: September 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8408 Filed 9–29–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel, 07–16, Review R21.

Date: October 27, 2006.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr, 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827, *kims@email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 0–7–11, Review R21s.

Date: November 2, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–04, Review R01.

Date: November 7, 2006.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr, 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827, *kims@email.nidr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–12, Review R21s, R03.

Date: November 9, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter/zelazowski@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–03, Review R21s.

Date: December 19, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr, 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4827, *kims@email.nidr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8406 Filed 9–29–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; Clinical Laboratory Diagnostics for Invasive Aspergillosis.

Date: October 16, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alec Ritchie, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/ NIAID/DHHS, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–1614; *aritchie@niaid.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 Allergy and Infectious Diseases Special Emphasis Panel, Development of Therapeutic Agents for Selected Biodefense Bacterial Diseases.

Date: October 19–20, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

Contact Person: Stefani T. Rudnick, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *srudnick@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Role of Antibodies and Dendritic Cells in Autoimmune Disease Progression or Tolerance Induction.

Date: October 19, 2006.

Time: 9:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Mercy R. Prabhudas, Phd., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2615, *mp457n@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Teleconference Review of an Intracellular Pathogen Program Application.

Date: October 25, 2006.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3118, Bethesda, Md 20817, (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8407 Filed 9–29–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 4, 2006, 8 a.m. to October 5, 2006, 5 p.m. National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on September 11, 2006, 71 FR 53458–53460.

The meeting title has been changed to ''Small Business: Ear''. The meeting is closed to the public.

Dated: September 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–8411 Filed 9–29–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–25898]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number 1625–0008

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) to request an extension for the following collection of information: 1625–0008, Regattas and Marine Parades. Before submitting the ICR to OMB, the Coast Guard is inviting comments on it as described below.

DATES: Comments must reach the Coast Guard on or before December 1, 2006.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2006–25898] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents; or telephone Ms. Renee V. Wright, Program Manager, Docket Operations, 202–493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*; they will include any personal information you have provided. We

have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2006–25898], indicate the specific section of the document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Information Collection Request

Title: Regattas and Marine Parades.

OMB Control Number: 1625–0008.

Summary: Title 33, Section 1233 of the U.S. Code authorizes the Coast Guard to issue regulations to promote the safety of life on navigable waters during regattas or marine parades. The regulation requiring the submission of an application by individuals or organizations planning to hold a regatta or marine parade (marine events) that will introduce extra or unusual hazards to the safety of life on the navigable waters of the United States is in 33 CFR 100.15.

Need: The Coast Guard needs to determine whether a marine event may present a substantial threat to the safety of human life on navigable waters and determine which measures are necessary to ensure the safety of life during the events. Sponsors must notify the Coast Guard of the efficient means for the Coast Guard to learn of the events and address environmental impacts.

Respondents: Sponsors of marine events.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 3,000 hours a year.

Dated: September 21, 2006.

R.T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E6–16095 Filed 9–29–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–25280]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0052, 1625–0057, and 1625–0065

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard is forwarding three Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) to request an extension of their approval of the following collections of information. The ICRs are: (1) 1625–0052, Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges; (2) 1625–0057, Small Passenger Vessels—Title 46 CFR Subchapters K and T; and (3) 1625–0065, Offshore Supply Vessels—Title 46 CFR Subchapter L. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before November 1, 2006.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2006–25280] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 or by contacting (b) OIRA at (202) 395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System (DMS) at *http://dms.dot.gov.* (b) By e-mail to *nlesser@omb.eop.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 1236 (Attn: Ms. Barbara Davis), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents; or Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would

appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICRs addressed. Comments to DMS must contain the docket number of this request, [USCG 2006–25280]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before November 1, 2006.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2006–25280], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Previous Request for Comments.

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (71 FR 40525, July 17, 2006) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

1. *Title:* Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges.

OMB Control Number: 1625–0052.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners of tank barges.

Forms: None.

Abstract: The Coast Guard uses the results of nondestructive testing to evaluate the suitability of older pressure-vessel-type cargo tanks of unmanned barges to remain in service. Once every 10 years it subjects such a tank, on an unmanned barge 30 years old or older, to nondestructive testing.

Burden Estimate: The estimated burden has increased from 72 hours to 104 hours a year.

2. *Title:* Small Passenger Vessels—Title 46 CFR Subchapters K and T.

OMB Control Number: 1625–0057.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of small passenger vessels.

Forms: CG–841, CG–854, CG–948, CG–949, CG–3752, and CG–5256.

Abstract: These information requirements are necessary for the proper administration and enforcement of the program on safety of commercial vessels as it affects small passenger vessels. The requirements affect small passenger vessels (under 100 gross tons) that carry more than 6 passengers.

Burden Estimate: The estimated burden has decreased from 366,798 hours to 353,263 hours a year

3. *Title:* Offshore Supply Vessels—Title 46 CFR Subchapter L.

OMB Control Number: 1625–0065.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Forms: None.

Abstract: The OSV posting/marking requirements are needed to provide instructions to those on board of actions to be taken in the event of an emergency. The reporting/recordkeeping requirements verify compliance with regulations without Coast Guard presence to witness routine matters, including OSVs based overseas as an alternative to Coast Guard reinspection.

Burden Estimate: The estimated burden has decreased from 6,175 hours to 6,169 hours a year.

Dated: September 22, 2006.

R.T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E6–16224 Filed 9–29–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–25747]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number 1625–0086

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) requesting a revision of a currently approved collection of information: 1625–0086, Great Lakes Pilotage. Before submitting the ICR to OMB, the Coast Guard is inviting comments on it as described below.

DATES: Comments must reach the Coast Guard on or before December 1, 2006.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2006–25747] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday

through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents; or telephone Ms. Renee V. Wright, Program Manager, Docket Operations, 202–493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*; they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2006–25747], indicate the specific section of the document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Information Collection Request

Title: Great Lakes Pilotage.

OMB Control Number: 1625–0086.

Summary: The Office of Great Lakes Pilotage is seeking OMB's approval to change Great Lakes Pilotage data collection requirements for the three U.S. pilot associations it regulates. This change would require submission of data to an electronic data collection system. This new system is identified as the Great Lakes Electronic Pilot Management System. This electronic system replaces the manual paper submissions previously used to collect data on bridge hours; vessel delay, detention, cancellation, and moveage; pilot travel; revenues; pilot availability; and related data. This change will ensure that the required data is available in a timely manner and will allow immediate accessibility to data crucial from both an operational and ratemaking standpoint. Currently, this information is being recorded manually.

Need: To comply with the statutory and regulatory requirements respecting the ratemaking and oversight functions imposed upon the agency.

Respondents: Three U.S. Pilot Associations and Individual Pilots on the Great Lakes.

Frequency: Daily.

Burden Estimate: The estimated burden remains 18 hours a year.

Dated: September 22, 2006.

R.T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications. Computers and Information Technology.

[FR Doc. E6–16226 Filed 9–29–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–25281]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0016, 1625–0023, and 1625–0033

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard is forwarding three Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) to request an extension of their approval of the following collections of information. The ICRs are: (1) 1625–0016, Welding and Hot Works Permits; Posting of Warning Signs; (2) 1625–0023, Barge Fleeting Facility Records; and (3) 1625–0033, Display of Fire Control Plans for Vessels. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before November 1, 2006.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2006–25281] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal

holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 or by contacting (b) OIRA at (202) 395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System (DMS) at *http://dms.dot.gov.* (b) By e-mail to *nlesser@omb.eop.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 1236 (Attn: Ms. Barbara Davis), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents; or Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICRs addressed. Comments to DMS must contain the docket number of this request, [USCG 2006–25281]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before November 1, 2006.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2006–25281], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (71 FR 40526, July 17, 2006) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

1. *Title:* Welding and Hot Work Permits; Posting of Warning Signs.

OMB Control Number: 1625–0016.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of certain waterfront facilities and vessels.

Forms: CG–4201.

Abstract: This information collected helps to ensure that waterfront facilities and vessels are in compliance with safety standards. A permit must be issued prior to welding or hot work on certain waterfront facilities; and, under 33 CFR 126.15(a)(3), the posting of warning signs is required on designated waterfront facilities.

Burden Estimate: The estimated burden has decreased from 226 hours to 178 hours a year.

2. *Title:* Barge Fleeting Facility Records.

OMB Control Number: 1625–0023.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators of barge fleeting facilities.

Forms: None.

Abstract: This collection of information requires the person-in-charge of a barge fleeting facility to keep records of twice-daily inspections of barge moorings and movements of barges and hazardous cargo in and out of the facility.

Burden Estimate: The estimated burden has increased from 32,092 hours to 61,919 hours a year.

3. *Title:* Display of Fire Control Plans for Vessels.

OMB Control Number: 1625–0033.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Forms: None.

Abstract: This information collection is for the posting or display of specific plans on certain categories of commercial vessels. The availability of these plans aid firefighters and damage control efforts in response to emergencies.

Burden Estimate: The estimated burden has decreased from 911 hours to 859 hours a year.

Dated: September 22, 2006.

R.T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Commmunications, Computers and Information Technology.

[FR Doc. E6–16227 Filed 9–29–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–25282]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0104, and 1625–0110

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard is forwarding two Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) to request an extension of their approval of the following collections of information. The ICRs are: (1) 1625–0104, Barges Carrying Bulk Hazardous Materials; and (2) 1625–0110, Maritime Identification Credentials—Title 33 CFR Part 125. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before November 1, 2006.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2006–25282] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 or by contacting (b) OIRA at (202) 395–6566. To ensure your comments are received in time, mark the fax to the attention of Mr. Nathan Lesser, Desk officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System (DMS) at *http://dms.dot.gov.* (b). By e-mail to *nlesser@omb.eop.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 1236 (Attn: Ms. Barbara Davis), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is (202) 475–3523.

FOR FURTHER INFORMATION CONTACT: Ms Barbara Davis, Office of Information Management, telephone (202) 475–3523 or fax (202) 475–3929, for questions on these documents; or Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION:

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the ICRs addressed. Comments to DMS must contain the docket number of this request, [USCG 2006–25282]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the November 1, 2006.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2006–25282], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Previous Request for Comments: This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (71 FR 40527, July 17, 2006)

required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Information Collection Request

1. *Title:* Barges Carrying Bulk Hazardous Materials.

OMB Control Number: 1625–0104.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of tank barges.

Forms: None.

Abstract: This information is needed to ensure the safe shipment of bulk hazardous liquids in barges. The requirements are necessary to ensure that barges meet safety standards and to ensure that barge crewmembers have the information necessary to operate barges safely.

Burden Estimate: The estimated burden remains 13,255 hours a year.

2. *Title:* Maritime Identification Credentials—Title 33 CFR Part 125.

OMB Control Number: 1625–0110.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators of port facilities.

Forms: None.

Abstract: This information is needed to control access to certain waterfront facilities and ensure that an individual, before entry to one of these facilities—(1) Possesses an identification credential listed or approved pursuant to Title 33 CFR part 125, and (2) that the identity information is vetted by the Transportation Security Administration.

Burden Estimate: The estimated burden has decreased from 43,796 hours to 14,476 hours a year.

Dated: September 22, 2006.

R.T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E6–16228 Filed 9–29–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–25796]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boats and associated equipment, prevention through people, and recreational boating safety strategic planning will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Saturday, October 21, 2006, from 1 p.m. to 5 p.m., on Monday, October 23, 2006, from 1:30 p.m. to 4:30 p.m., and on Tuesday, October 24, 2006, from 8:30 a.m. to 12 noon. The Prevention Through People Subcommittee will meet on Sunday, October 22, 2006, from 8:30 a.m. to 12 noon. The Boats and Associated Equipment Subcommittee will meet on Sunday, October 22, 2006, from 1:30 p.m. to 5 p.m. The Recreational Boating Safety Strategic Planning Subcommittee will meet on Monday, October 23, 2006, from 8:30 a.m. to 12 noon. These meetings may close early if all business is finished. On Sunday, October 22, a Subcommittee meeting may start earlier if the preceding Subcommittee meeting has closed early. Written material and requests to make oral presentations should reach the Coast Guard on or before Monday, October 9, 2006. Requests to have a copy of your material distributed to each member of the committee or subcommittees in advance of the meeting should also reach the Coast Guard on or before Thursday, October 12, 2006.

ADDRESSES: NBSAC will meet at the Hyatt Regency Hotel, 2799 Jefferson Davis Highway, Arlington, VA. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Jeff Ludwig, Executive Secretary of NBSAC, Commandant (G–PCB–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* or at the Web Site for the Office of Boating Safety at URL address *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Jeff Ludwig, Executive Secretary of NBSAC, telephone 202–267–0967, fax 202–267–4285. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Remarks—Mr. James P. Muldoon, NBSAC Chairman; Rear Admiral Brian Salerno, Director of Inspections & Compliance.

(2) Swearing in of recent appointees (includes new members and continued members).

(3) Chief, Office of Boating Safety Update on NBSAC Resolutions and Recreational Boating Safety Program report.

(4) Executive Director's report.

(5) Chairman's session.

(6) Report from TSAC Liaison.

(7) Report from NAVSAC Liaison.

(8) Coast Guard Auxiliary report.

(9) National Association of State Boating Law Administrators Report.

(10) Update on development of Vessel Identification System.

(11) Report on current recreational boating survey.

(12) Prevention Through People Subcommittee report.

(13) Boats and Associated Equipment Subcommittee report.

(14) Recreational Boating Safety Strategic Planning Subcommittee report.

Prevention Through People Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts, and new issues impacting prevention through people.

Boats and Associated Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting boats and associated equipment.

Recreational Boating Safety Strategic Planning Subcommittee. The agenda includes the following: Discuss current status of the strategic planning process and any new issues or factors that could impact, or contribute to, the development of the strategic plan for the recreational boating safety program.

Procedural

All meetings are open to the public. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Secretary of your request no later than Monday, October 9, 2006. Written material for distribution at a meeting should reach the Coast Guard no later than Thursday, October 12, 2006. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than Thursday, October 12, 2006.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the

meetings, contact the Executive Secretary as soon as possible.

Dated: September 13, 2006.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. E6–16229 Filed 9–29–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

National Communications System

[Docket No. NCS–2006–0007]

National Security Telecommunications Advisory Committee

AGENCY: National Communications System, DHS.

ACTION: Notice of Partially Closed Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will be meeting by teleconference: the meeting will be partially closed.

DATES: Thursday, October 12, 2006, from 2 p.m. until 3 p.m.

ADDRESSES: The meeting will take place by teleconference. For access to the conference bridge and meeting materials, contact Mr. William Fuller at (703) 235–5521, or by e-mail at *William.C.Fuller@dhs.gov* by 5 p.m. on Friday, October 6, 2006. If you desire to submit comments, they must be submitted by October 5, 2006. Comments must be identified by NCS–2006–0007 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: NSTAC1@dhs.gov*. Include docket number in the subject line of the message.
- *Mail:* Office of the Manager, National Communications System (N5), Department of Homeland Security, Washington, DC, 20529.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and NCS–2006–0007, the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov*, including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Ms. Kiesha Gebreyes, Chief, Industry Operations Branch at (703) 235–5525, e-mail: *Kiesha.Gebreyes@dhs.gov* or write the Deputy Manager, National Communications System, Department of Homeland Security, CS&T/NCS/N5.

SUPPLEMENTARY INFORMATION: The NSTAC advises the President on issues and problems related to implementing national security and emergency preparedness telecommunications policy. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended (5 U.S.C. App. 1 *et seq.*).

At the upcoming meeting, between 2 p.m. and 2:20 p.m., the members will receive comments from government stakeholders and receive an update from the NSTAC's Emergency Communications and Interoperability Task Force (ECITF). This portion of the meeting will be open to the public.

Between 2:20 p.m. and 3 p.m., the committee will discuss and vote on the Global Infrastructure Resiliency (GIR) Report and discuss NSTAC's Influenza Pandemic Study. This portion of the meeting will be closed to the public.

Persons with disabilities who require special assistance should indicate this when arranging access to the teleconference and are encouraged to identify anticipated special needs as early as possible.

Basis for Closure: The GIR discussion will likely involve sensitive infrastructure information concerning system threats and explicit physical/cyber vulnerabilities related to current communications capabilities. The discussion on NSTAC's Influenza Pandemic Study will likely involve sensitive information concerning prioritization of critical infrastructure capabilities, and the use of vaccines and medications. Public disclosure of such information would heighten awareness of potential vulnerabilities and increase the likelihood of exploitation by terrorists or other motivated adversaries. Pursuant to Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*), the Department has determined that this discussion will concern matters which, if disclosed, would be likely to frustrate significantly the implementation of a proposed agency action. Accordingly, the relevant portion of this meeting will be closed to the public pursuant to the authority set forth in 5 U.S.C. 552b(c)(9)(B).

Dated: September 13, 2006.

Peter M. Fonash,

Deputy Manager National Communications System.

[FR Doc. 06–8398 Filed 9–29–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5103–N–01]

Notice of Certain Operating Cost Adjustment Factors for 2007

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Publication of the 2007 Operating Cost Adjustment Factors (OCAFs) for Section 8 rent adjustments at contract renewal under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) Projects assisted with Section 8 Housing Assistance Payments.

SUMMARY: This notice establishes annual factors used in calculating rent adjustments under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA).

DATES: *Effective Date:* February 11, 2007.

FOR FURTHER INFORMATION CONTACT: Stan Houle, Housing Project Manager, Office of Housing Assistance and Grant Administration, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000; extension 2572 (This is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Operating Cost Adjustment Factors (OCAFs)

Section 514(e)(2) of MAHRA requires HUD to establish guidelines for rent adjustments based on an operating cost adjustment factor (OCAF). The legislation requiring HUD to establish OCAFs for LIHPRHA projects and projects with contract renewals under section 524 of MAHRA is similar in wording and intent. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing

OCAFs as the method by which rents are adjusted.

Additionally, section 524 of the Act gives HUD broad discretion in setting OCAFs—referring simply to ''operating cost factors established by the Secretary.'' The sole exception to this grant of authority is a specific requirement that application of an OCAF shall not result in a negative rent adjustment. OCAFs are to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted upon expiration of the term of the contract. OCAFs are applied to project contract rent less debt service.

An analysis of cost data for FHA-insured projects showed that their operating expenses could be grouped into nine categories: Wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water and sewer. Based on an analysis of these data, HUD derived estimates of the percentage of routine operating costs that were attributable to each of these nine expense categories. Data for projects with unusually high or low expenses due to unusual circumstances were deleted from analysis.

States are the lowest level of geographical aggregation at which there are enough projects to permit statistical analysis. Additionally, no data were available for the Western Pacific Islands. Data for Hawaii was therefore used to generate OCAFs for these areas.

The best current measures of cost changes for the nine cost categories were selected. The only categories for which current data are available at the State level are for fuel oil, electricity, and natural gas. Current price change indices for the other six categories are only available at the national level. The Department had the choice of using dated State-level data or relatively current national data. It opted to use national data rather than data that would be two or more years older (*e.g.*, the most current local wage data are for 2003).

In prior years, OCAF adjustments have used either the overall Consumer Price Index (CPI) change or the Residential Property Tax index from the Census Consumer Expenditure Survey (CES) as a surrogate for property tax increases. In 2007, the surrogate is the Census Quarterly Summary of State and Local Government Tax Revenue—Table 1. Based on a review of available data, HUD has determined that continued use of the overall CPI index as a surrogate measure of property tax changes has become inappropriate. The most current CES data available for this analysis is from 2004; therefore, the information lags current market trends. Average property tax increases have been higher in recent years, and in limited instances are known to be much higher. Although the Census of Local Governments property tax revenues adjusted for revenue units is an inexact measure of residential property tax increases, it is the best such national measure found to date.

The data sources for the nine cost indicators selected used were as follows:

Labor Costs—3/2005 to 3/2006 Bureau of Labor Statistics (BLS), ''Employment Cost Index, Private Sector Wages and Salaries Component at the National Level.''

Employment Benefit Costs—3/2005 to 3/2006 Bureau of Labor Statistics (BLS) ''Employment Cost Index, Employee Benefits at the National Level.''

Property Taxes—2004–2005 Census Quarterly Summary of State and Local Government Tax Revenue—Table 1.

Goods, Supplies, Equipment—3/2005 to 3/2006 Bureau of Labor Statistics (BLS) ''Producer Price Index, Consumer Goods Less Food and Energy.''

Insurance—3/2005 to 3/2006 Bureau of Labor Statistic (BLS) ''Consumer Price Index, Tenant and Household Residential Insurance Index.''

Fuel Oil—Energy Information Agency, 2004 to 2005 consumption-weighted annual average State prices for #2 residential fuel oil (Department of Energy multi-state fuel oil grouping averages used for the States with too little fuel oil consumption to have values).

Electricity—Energy Information Agency, February 2006 ''Electric Power Monthly'' report, Table 5.6.B.

Natural Gas—Energy Information Agency, Natural Gas, Residential Energy Price, 2004–2005 annual cost in dollars per 1,000 cubic feet (monthly data are so erratic that annual averages offer a more reliable measure).

Water and Sewer—3/2005 to 3/2006 Consumer Price Index, ''All Urban Consumers, Water and Sewer and Trash Collection Services.''

The sum of the nine cost components equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, the selected inflation factors are multiplied by the relevant State-level operating cost percentages derived from the previously referenced analysis of FHA insured projects. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and wages increased by 4 percent from March 2004 to March 2005, the wage increase component of the Virginia OCAF for 2006 would be 2.0 percent (4% × 50%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2006 OCAF for Virginia. These types of calculations were made for each State for each of the nine cost components, and are included as the Appendix to this Notice.

II. MAHRA and LIHPRHA OCAF Procedures

MAHRA, as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, created the Mark-to-Market Program to reduce the cost of Federal housing assistance, enhance HUD's administration of such assistance, and to ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without Restructuring Plans under the Mark-to-Market Program, including renewals that are not eligible for Plans and those for which the owner does not request Plans. Renewals must be at rents not exceeding comparable market rents except for certain projects. For Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the McKinney-Vento Homeless Assistance Act (McKinney Act, 42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities; or (3) comparable market rents for the market area.

The Low-Income Housing Preservation and Resident Homeownership Act of 1990 (''LIHPRHA'') (see, in particular, section 222(a)(2)(G)(i) of LIHPRHA, 12 U.S. 4112 (a)(2)(G) and the regulations at 24 CFR 248.145(a)(9) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by the Secretary to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs.

III. Findings and Certifications

Environmental Impact

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the

physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled ''Federalism'').

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Dated: September 22, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

OPERATING COST ADJUSTMENT FACTORS FOR 2007

	Percent
ALABAMA	3.2
ALASKA	5.6
ARIZONA	3.0
ARKANSAS	4.1
CALIFORNIA	3.7
COLORADO	3.6
CONNECTICUT	6.3
DELAWARE	4.4
DIST.OF COLUMBIA	3.8
FLORIDA	3.9
GEORGIA	3.8
HAWAII	4.4
IDAHO	3.1
ILLINOIS	4.3
INDIANA	4.1
IOWA	4.9
KANSAS	3.3
KENTUCKY	3.3
LOUISIANA	4.1
MAINE	5.1
MARYLAND	4.0
MASSACHUSETTS	5.9
MICHIGAN	4.7
MINNESOTA	4.6
MISSISSIPPI	4.0
MISSOURI	3.2
MONTANA	4.0
NEBRASKA	3.9
NEVADA	3.4
NEW HAMPSHIRE	4.6
NEW JERSEY	3.9
NEW MEXICO	3.4
NEW YORK	5.8
N. CAROLINA	3.0
N. DAKOTA	4.7
OHIO	4.7
OKLAHOMA	5.0
OREGON	3.1
PENNSYLVANIA	3.9
RHODE ISLAND	6.7
S. CAROLINA	3.1

OPERATING COST ADJUSTMENT FACTORS FOR 2007—Continued

	Percent
S. DAKOTA	4.9
TENNESSEE	3.4
TEXAS	5.8
UTAH	3.2
VERMONT	4.0
VIRGINIA	3.5
WASHINGTON	3.1
W. VIRGINIA	3.1
WISCONSIN	4.3
WYOMING	3.4
PACIFIC ISLANDS	3.8
PUERTO RICO	2.6
VIRGIN ISLANDS	2.0
U.S. AVERAGE	4.3

[FR Doc. E6–16182 Filed 9–29–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–26]

Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999, notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single-family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 28th review period, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the

requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Homeownership centers
Alethes LLC	6010 Balcones Dr., #209, Austin, TX 78731	San Antonio, TX	7/15/2006	Denver.
Level I Mortgage Corp	1745 Shea Center Dr., Ste 140, Littleton, CO 80129.	Denver, Colorado	9/1/2006	Denver.

Dated: September 22, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–16183 Filed 9–29–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4917–N–09]

Notice of FHA Debenture Call

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces a debenture recall of certain Federal Housing Administration (FHA) debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Darryl Getter, Office of Evaluation, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2232, Washington, DC 20410; telephone (202) 755–7500, extension 7541. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 204(c) and 207(j) of the National Housing Act, 12 U.S.C. 1710(c) and 1713(j), and in accordance with HUD's regulations at 24 CFR 203.409 and 207.259(e)(3), the Assistant Secretary for Housing—Federal Housing Commissioner, with the approval of the Secretary of HUD and the Secretary of the Treasury, announces the call of all FHA debentures, with a coupon rate of 6.00 percent or above, except for those debentures subject to ''debenture lock agreements,'' that have been registered on the books of the Bureau of Public Debt, Department of the Treasury, and are, therefore, ''outstanding'' as of September 30, 2006. The date of the call is January 1, 2007.

The debentures will be redeemed at par value plus accrued interest. Interest will cease to accrue on the debentures as of the call date. At redemption, final interest on any called debentures will be paid along with the principal. Payment of final principal and interest due on January 1, 2007, will be made automatically to the registered holder.

During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer of debentures covered by the foregoing call will be made on the books maintained by the Department of the Treasury on or after December 15, 2006. This debenture call does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date.

Dated: September 16, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–16185 Filed 9–29–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4679–N–12]

Multifamily Mortgage Insurance Premiums; Withdrawal of Proposal to Increase MIPs for FY2007

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: HUD issued a notice on June 28, 2006, announcing for public comment, proposed changes in the mortgage insurance premiums (MIP) for Federal Housing Administration (FHA) multifamily mortgage insurance programs whose commitments will be issued or reissued in Fiscal Year (FY) 2007. The notice allowed 30 days for public comment. Approximately 359 comments were received by the comment due date, and the comments, including a letter signed by 121 members of the U.S. House of Representatives and 26 United States Senators, were overwhelmingly opposed to the MIP increases proposed for a number of HUD's multifamily housing mortgage insurance programs. Based on consideration of the concerns raised in the comments, HUD has decided not to proceed with implementation of the MIP increases for FY 2007. Instead, the FY 2006 MIPs, issued on August 30, 2005, will remain in effect for FY 2007. However, FHA will continue to evaluate alternative pricing strategies to maintain the integrity of the fund and achieve policy goals.

DATES: *Effective Date:* October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Eric Stevenson, Director, Policy Division, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, Telephone: (202) 708–1142 (this is not a toll-free number). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

HUD's regulations at 24 CFR 207.252, 207.252a and 207.254 provide that instead of setting the MIP at one specific rate for all programs, the Secretary is permitted to change an MIP program by program within the full range of HUD's statutory authority of one fourth of one percent to one percent of the outstanding mortgage principal per annum through a notice, as provided in section 203(c)(1) of the National Housing Act (the Act) (12 U.S.C. 1709(c)(1)). The regulation states that HUD will provide a 30-day period for public comment on notices changing MIPs in multifamily insured housing programs.

Public Comments

The public comment period for the notice of proposed MIP changes for FY2006, published on June 28, 2006 (71 FR 36968) closed on July 28, 2006. By the close of the public comment period, approximately 359 public comments were received by the Department, of which the majority were in the nature of a form letter. In addition to the comments submitted by form letters, several organizations submitted comments, and 121 members of the U.S. House of Representatives and 26 U.S. Senators signed a comment letter opposing the increase in MIPs for FY2007. In addition to the opposition by Congressional members, virtually, all of the public comments were opposed to the MIP increases in a number multifamily housing programs, citing a variety of problems that could occur within individual programs and raising questions about HUD's cost justification for the increases.

FY 2007 Mortgage Insurance Premiums

The Department has therefore decided that the FY 2007 MIPs will be the same as the FY2006 MIPs. The FY 2006 MIPs are published on August 30, 2005, at 70 FR 51539 and remain in effect.

Dated: September 27, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 06–8422 Filed 9–29–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination for the Burt Lake Band of Ottawa and Chippewa Indians, Inc.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Associate Deputy Secretary (ADS) has determined that the Burt Lake Band of Ottawa and Chippewa Indians, Inc., c/o Mr. Curtis Chambers, does not satisfy all seven criteria for acknowledgment as an Indian tribe in 25 CFR 83.7.

DATES: This determination is final and will become effective 90 days from publication of the Final Determination, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

ADDRESSES: Requests for a copy of the summary evaluation of the evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, 1951 Constitution Avenue, NW., MS: 34B–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the ADS by Secretarial Order 3259, of February 8, 2005, as amended on August 11, 2005, and on March 31, 2006.

This notice is based on a determination that the Burt Lake Band of Ottawa and Chippewa Indians, Inc. (BLB) does not satisfy all of the seven mandatory criteria for acknowledgment in 25 CFR 83.7, as modified by section 83.8. The acknowledgment process is based on the regulations at 25 CFR part 83. Under these regulations, the petitioner has the burden to present evidence that it meets the seven mandatory criteria in section 83.7.

A notice of the Proposed Finding to decline to acknowledge the BLB was published in the **Federal Register** on April 15, 2004. The regulations provide a 180-day period for comment on the Proposed Finding and at the petitioner's request this comment period was extended three times to close on May 2, 2005. This determination is made following a review of the BLB's response to the Proposed Finding. No third parties submitted comments on the Proposed Finding.

This Final Determination concludes that the petitioner is eligible to be evaluated under section 83.8 with a last date of acknowledgment as of 1917.

Under 83.8(d)(5), the petitioner was evaluated under criterion 83.7(a), which requires that the petitioner be identified as an American Indian entity on a substantially continuous basis, from the point of last Federal acknowledgment. The available evidence demonstrates that external observers have identified the petitioning group as an American Indian entity on a substantially continuous basis since 1917, the date of last Federal acknowledgment.

Criterion 83.7(b), as modified by section 83.8(d)(2), requires that a predominant portion of the petitioning group comprise a distinct community and exist as a community at present. The BLB submitted evidence from ghost supper sign-in sheets, photographs, funeral records, and interviews submitted by the petitioner to supplement materials already in the record. The evidence demonstrates that the BLB as defined by its membership list is not a community. More than half of the petitioner's members only rarely if ever participate in activities with other BLB members. The evidence demonstrates further that the BLB petitioner's core social community is part of a greater Burt Lake community composed predominantly of members of a federally recognized tribe, the Little Traverse Bay Bands of Odawa Indians (LTBB), and members of the BLB petitioner. Neither the petitioner's core social community nor the petitioner itself is distinct from this greater Burt Lake community. Further, the peripheral members of BLB are more likely to interact socially with older parents or grandparents and other relatives enrolled in LTBB than with non-relatives in BLB. The BLB petitioner does not meet criterion 83.7(b) because it is not a distinct social community at present, as the regulations require.

Criterion 83.7(c), as modified by section 83.8(d)(3), requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from 1917 until the present. The BLB petitioner does not meet criterion 83.7(c), as modified by section 83.8(d)(3), because it has not

provided sufficient evidence of identifications of leaders or of a governing body of the petitioning group by authoritative, knowledgeable external sources on a substantially continuous basis since 1917. The BLB petitioner does not meet criterion 83.7(c), under the provisions of section 83.8(d)(5), because it has not provided a combination of evidence sufficient to demonstrate that the petitioning group has maintained political influence or authority over its members from 1917 to the present. From 1917 into the 1970's, the available evidence, with one exception, demonstrates political activity by Burt Lake band descendants within entities much larger than the petitioner. This historical pattern persists at present.

The politically active members of the BLB are part of the greater Burt Lake community, composed predominantly of Indian individuals who are not members of BLB. Past members of BLB, who are now enrolled in a federally recognized tribe, influence the petitioner's members on significant issues. Authority flows from influential family members to their kin. Families, however, have members both in BLB and in federally recognized tribes, primarily LTBB, or not enrolled in any Indian tribe or petitioner. Younger, peripheral members of BLB consult with older relatives who belong to LTBB concerning BLB issues, and these older relatives, former BLB members, deal with leaders of the greater Burt Lake community who belong to both organizations. The evidence demonstrates the existence of influence within a group of Burt Lake band descendants larger than the current membership of the petitioner, rather than a bilateral relationship between leaders and members within the petitioning group.

Criterion 83.7(d) requires that the petitioner provide a copy of the group's present governing document including its membership criteria. The BLB petitioner submitted a constitution, voted on by the members via absentee ballots in February 2005, and certified as the group's official governing document by a resolution dated April 9, 2005. The BLB petitioner submitted a copy of its current governing document, which includes its membership criteria and the processes by which it governs itself. Therefore, the BLB petitioner meets criterion 83.7(d).

Criterion 83.7(e) requires that the petitioner's membership consist of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. The BLB submitted a membership list dated April 2005, identifying 320 members, and including all categories of information required by section 83.7(e)(2). This represents a removal of 624 of the 857 members who appeared on the group's December 2002 membership list, and an addition of 87 new members.

The FD found that 68 percent, or 218 of the 320 BLB members, could satisfactorily document descent from the historical band. The 102 members who could not document descent from the historical tribe included 53 descendants of two non-Cheboygan women, Elizabeth Martell and Charlotte Boda, who arrived in the Burt Lake area after the October 1900 burnout of the Indian village. These women had siblings who married into the group, but neither the women nor their descendants did so. The other 49 members could not document descent from the historical tribe due to missing or insufficient evidence of descent. Based on precedent, because only 68 percent of its members descend from the historical Cheboygan band, the BLB petitioner does not meet the requirements of criterion 83.7(e).

Criterion 83.7(f) requires that the membership of the petitioning group be composed principally of persons who are not members of any acknowledged North American Indian tribe. A review of the available documentation revealed that the membership is composed principally of persons who are not members of any acknowledged North American Indian tribe. The BLB petitioner meets criterion 83.7(f).

Criterion 83.7(g) requires that neither the petitioner nor its members be the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. A review of the available documentation showed no evidence that the petitioning group was the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe. The BLB petitioner meets the requirements of criterion 83.7(g).

As provided by 25 CFR 83.10(h), a report summarizing the evidence, reasoning, and analyses that are the basis for the final determination will be provided to the petitioner and interested parties, and is available to other parties upon written request.

After the publication of notice of the final determination, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals (IBIA) under the procedures set forth in section 83.11 of the regulations. This request must be received by the IBIA no later than 90 days after the publication of the final determination in the **Federal Register**. The final determination will become effective as provided in the regulations 90 days from the **Federal Register** publication unless a request for reconsideration is filed within that time period.

Dated: September 21, 2006.

James E. Cason,

Associate Deputy Secretary.

[FR Doc. E6–16191 Filed 9–29–06; 8:45 am]

BILLING CODE 4310–G1–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Second Review)]

Clad Steel Plate From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on clad steel plate from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 21, 2006. Comments on the adequacy of responses may be filed with the Commission by December 15, 2006. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 2, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW.,

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 07–5–159, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On July 2, 1996, the Department of Commerce issued an antidumping duty order on imports of clad steel plate from Japan (61 FR 34421). Following five-year reviews by Commerce and the Commission, effective November 16, 2001, Commerce issued a continuation of the antidumping duty order on imports of clad steel plate from Japan (66 FR 57703). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Like Product as all clad steel plate coextensive with Commerce's scope of the investigation, *i.e.*, all clad steel plate of a width of 600mm or more and a composite thickness of 4.5mm or more, regardless of cladding alloy.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Industry as producers of clad steel plate of a width of 600mm or more and a composite thickness of 4.5mm or more.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 21, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 15, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you

are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be provided in response to this notice of institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 2000.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 2000, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 25, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–16084 Filed 9–29–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–365–366 and 731–TA–734–735 (Second Review)]

Certain Pasta From Italy and Turkey

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing and antidumping duty orders on certain pasta from Italy and Turkey.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing and antidumping duty orders on certain pasta from Italy and Turkey would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 21, 2006. Comments on the adequacy of responses may be filed with the Commission by December 15, 2006. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 2, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 24, 1996, the Department of Commerce issued countervailing and antidumping duty orders on imports of certain pasta from Italy and Turkey (61 FR 38544). Following five-year reviews by Commerce and the Commission, effective November 16, 2001, Commerce issued a continuation of the countervailing and antidumping duty orders on imports of certain pasta from Italy and Turkey (66 FR 57703). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Italy and Turkey.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original and expedited five-year review determinations, the Commission defined the *Domestic Like Product* as all dry pasta. One Commissioner defined the *Domestic Like Product* differently in the original and expedited five-year review determinations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original and expedited five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of dry pasta. One Commissioner defined the *Domestic Industry* differently in the original and expedited five-year review determinations.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 07–5–160, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 21, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 15, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing and antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Countries* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2000.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject*

Merchandise in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* after 2000, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Countries*, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: September 25, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–16082 Filed 9–29–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–895 (Review)]

Pure Magnesium From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on pure magnesium in granular form from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on pure magnesium in granular form from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 21, 2006. Comments on the adequacy of responses may be filed with the Commission by December 15, 2006. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 2, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 19, 2001, the Department of Commerce issued an antidumping duty order on imports of pure magnesium in granular form from China (66 FR 57936). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined one *Domestic Like Product*-pure magnesium that includes both granular magnesium and magnesium ingot.

Two Commissioners defined the domestic like product differently in the original determination.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of pure magnesium, including grinding operations. One Commissioner defined the domestic industry differently in the original determination, and two Commissioners defined two separate domestic industries. The Commission also found that appropriate circumstances existed to exclude ESM from the *Domestic Industry.*

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 07–5–161, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is November 19, 2001.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 21, 2006. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 15, 2006. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2005 (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: September 25, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–16085 Filed 9–29–06; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: November 15, 2006.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 22, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–8380 Filed 9–29–06; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Bankruptcy and Criminal Procedure, and the Rule of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committees on Rules of Bankruptcy and Criminal Procedure, and the Rules of Evidence.

ACTION: Notice of Proposed Amendments and Open Hearings.

SUMMARY: The Advisory Committees on Rules of Bankruptcy and Criminal Procedure, and the Rules of Evidence have proposed amendments to the following rules:

Bankruptcy Rules: 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1017, 1019, 1020, 2002, 2003, 2007.1, 2015, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5001, 5003, 6004, 8001, 8003, 9006, and 9009, and New Rules 1021, 2007.2, 2015.1, 2015.2, 2015.3, 5008, 5012, and 6011, and Official Forms 1, 3A, 3B, 4, 5, 6, 7, 8, 9, 10, 16A, 18, 19A, 19B, 21, 22A, 22B, 22C, 23, 24, and new Official Forms 25A, 25B, 25C, 26, and Exhibit D to Form 1.

Criminal Rules: 1, 12.1, 17, 18, 29, 32, 41, and new Rules 60 and 61.

Evidence Rule: 502.

The text of the proposed rules amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Home Page at *http://www.uscourts.gov/rules.*

The Judicial Conference Committee on Rules of Practice and Procedure submits these proposed Rules amendments for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary as soon as convenient and, in any event, not later than February 15, 2007. All written comments on the proposed rule amendments can be sent by one of the following three ways: by overnight mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544; by electronic mail at *http://www.uscourts.gov/rules*; or by facsimile to Peter G. McCabe at (202) 502–1766. In accordance with established procedures all comments submitted on the proposed amendments are available to public inspection.

Public hearings are schedule to be held on the amendments to:

- Bankruptcy Rules in Washington, DC, on January 22, 2007;
- Criminal Rules in Washington, DC, on January 26, 2007; and in San Francisco, California, on February 2, 2007; and
- Evidence Rules in Phoenix, AZ, on January 12, 2007; and in New York, New York on January 29, 2007.

Those wishing to testify should contact the Committee Secretary at the above address in writing at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 22, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–8381 Filed 9–29–06; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: November 16, 2006.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 22, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–8385 Filed 9–29–06; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: January 11–12, 2007.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: The Hermosa Inn, Stetson Room, 5532 North Palo Cristi Road, Scottsdale, AZ.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 22, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–8386 Filed 9–29–06; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: March 29–30, 2007.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Hilton Marco Island Beach Resort, Ballroom A, 560 South Collier Boulevard, Marco Island, FL 34145.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 22, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–8387 Filed 9–29–06; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Proposed Collection; National Inmate Survey.

The Department of Justice (DOJ), Bureau of Justice Statistics, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 1, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Allen J. Beck, PhD., Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531 (phone: 202–616–3277).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New data collection.

(2) *Title of the Form/Collection:* National Inmate Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form numbers not available at this time. The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice is the sponsor for the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Federal Government, Business or other for-profit, Not-for-profit institutions. The work under this clearance will be used to develop surveys to produce estimates for the incidence and prevalence of sexual assault within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 90,100 respondents will spend approximately 30 minutes on average responding to the survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 45,360 total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 27, 2006.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E6–16179 Filed 9–29–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Debtor Audit Standards

AGENCY: Executive Office for United States Trustees, Justice.

ACTION: Notice.

SUMMARY: This notice sets forth the standards that will be utilized to determine the accuracy, veracity, and completeness of petitions, schedules, and other information that a debtor is required to provide under sections 521 and 1322 of title 11, United States Code, and, if applicable, section 111 of such title, in cases filed under chapter 7 or 13 of such title in which the debtor is an individual.

ADDRESSES: Comments on the standards may be submitted electronically via e-mail to *UST.DebtorAudits.Help@usdoj.gov*, or by postal mail at Executive Office for United States Trustees, Debtor Audit Team, 20 Massachusetts Ave, 8TH Floor, Washington, DC 20530. To ensure proper handling, please reference EOUST Debtor Audit Standards on your correspondence. Comments received are public records.

FOR FURTHER INFORMATION CONTACT: Mark A. Redmiles, Chief, Civil Enforcement Unit, Executive Office for United States Trustees, 20 Massachusetts Ave, 8th Floor, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: The authority for these standards is located at 28 U.S.C. 586(f)(1), and section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (enacted April 20, 2005), Public Law 109–8, 119 Stat. 37.

Dated: September 26, 2006.

Lynn Bryant,

Department Clearance Officer, U.S. Department of Justice.

Debtor Audit Standards

Debtor Audit Standard No. 1

The debtor audit engagement shall be performed by individuals having adequate technical training and proficiency for performing attest engagements.

Debtor Audit Standard No. 2

The debtor audit engagement shall be performed by individuals having adequate knowledge of bankruptcy petitions, schedules, and statements; the Bankruptcy Code; and the Federal Rules of Bankruptcy Procedure.

Debtor Audit Standard No. 3

In all matters relating to the debtor audit, an independence in mental attitude shall be maintained by the individuals performing the engagement.

Debtor Audit Standard No. 4

Due professional care shall be exercised in the planning and performance of the engagement.

Debtor Audit Standard No. 5

The work shall be adequately planned and assistants, if any, are to be properly supervised.

Debtor Audit Standard No. 6

Sufficient evidence must be obtained to provide a reasonable basis for the conclusion expressed in the report filed with the court.

Debtor Audit Standard No. 7

The report shall identify that the subject matter of the debtor audit is the petition, schedules, and other information as originally filed by the debtor in the bankruptcy case and state that the debtor audit was conducted in accordance with the Debtor Audit Standards and the procedures established by the United States Trustee Program.

Debtor Audit Standard No. 8

The report shall clearly and conspicuously state the conclusion as to the presence or absence of material misstatements in income, expenses, or assets, in the petition, schedules, and statements originally filed by the debtor in the bankruptcy case.

Debtor Audit Standard No. 9

The report shall state that it is intended solely for the information and use of the United States Trustee and other parties in interest to the bankruptcy case and that it is not intended to be and should not be used by anyone other than these specified parties; noting however, that since the report is a matter of public record, its distribution is not limited.

[FR Doc. E6–16129 Filed 9–29–06; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0068]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review:Police Check Inquiry.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 1, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Niki Wiltshire, Personnel Security Branch, Suite 03J05, 131 M Street, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Police Check Inquiry.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 8620.42. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. ATF F 8620.42 has been designed as an internal use form to gather preliminary information from an individual requiring escorted access to ATF facilities. The information is necessary to permit ATF to complete and/or initiate a police check inquiry consisting of criminal record searches. In the event a contractor or other type of non-ATF personnel requires escorted access to facilities, ATF will perform a policy check inquiry.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 1,000 respondents will complete a 5 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 83 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 26, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–16190 Filed 9–29–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on September 6, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'', Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery antitrust plaintiffs to actual damages under specified circumstances. Specifically, CAE, St-Laurent, Quebec, Canada; PrismTech Corporation, Burlington, MA; COMCARE, Washington, DC; Emergency Interoperability Consortium, Washington, DC; Intelligent Automation, Inc., Rockville, MD; STM (Savunma Teknolojileri Mühendislik ve Ticaret A.S.), Ankara, Turkey; and SteelCloud, Herndon, VA have been added as parties to this venture.

Also, LynuxWorks, Inc., San Jose, CA; and SAP Labs, Inc., Washington, DC have withdrawn as parties to this venture. In addition, Gallium Software, Inc. has changed its name to Gallium Visual Systems, Inc., Ottawa, Ontario, Canada.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on June 10, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 20, 2006 (71 FR 41257).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–8378 Filed 9–29–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Telemanagement Forum

Notice is hereby given that, on August 11, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301

et seq. (''the Act''), Telemanagement Forum (''the Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 24*7 Telecom Services, Bear, DE; Acumen Solutions UK Ltd., London, United Kingdom; AdvancedVoIP.com, Islamabad, Pakistan; AOL (UK) Ltd., London, United Kingdom; AOL Services (UK), London, United Kingdom; Appium AB, Malmo, Sweden; Ars Logica, Trento, Italy; BoldTech System Inc., Denver, CO; Bonus Technology, Inc., Newark, NJ; Business Consulting Network, Santiago, Chile; Carphone Warehouse, London, United Kingdom; Com Hem AB, Stockholm, Sweden; Computer Sciences Corporation, Wiesbaden, Germany; Comverse, Tel-Aviv, Israel; Connectiva Systems, Fair Lawn, NJ; CorpTech, Moscow, Russia; CTC Ltd., Kyiv, Ukraine; CyberAccess, Inc., Chagrin Falls, OH; DataSynapse, New York, NY; Dialog, Milton, Queensland, Australia; Elion Ettevõtted AS, Harjumaa, Estonia; Enterprise Architecture Consulting, Southampton, United Kingdom; Enure Networks, Herzeliya, Israel; Errigal Telecom Solutions, San Francisco, CA; Exploit Technologies LLC, Lone Tree, CO; Fastwire Pte Ltd., Singapore, Singapore; Fingerprint Consultancy, Cairo, Egypt; FROX communication, Hombrechtikon, Switzerland; Gamma Telecom, Newbury, United Kingdom; Glenayre Technologies, Duluth, GA; HCL Technologies, Uttar Pradesh, India; iAxisLimited, Andhra Pradesh, India; iisy AG, Rimpar, Germany; Integra Consultores, Caracas, Venezuela; ipworth, Bellevue, WA; Iskratel Telekomunikacijski sistemi, d.o.o., Slovenia, Slovenia; Jordan Mobile Telephone Services—Fastlink, Amman, Jordan; Kamco, Melbourne, Victoria, Australia; Kyivstar G.S.M. JSC, Kyiv, Ukraine; Metabula Ltd., Cambridge, United Kingdom; MFlory & Associates, Inc., Barnegat, NJ; Mobile Telecommunications Company, Safat, Kuwait; Mobile Telecommunications Company Group, Safat, Kuwait; MTC Touch, Beirut, Lebanon; MTC—Vodafone (Bahrain), Manama, Bahrain; Naumen, Moscow, Russia; neos networks, Reading, United Kingdom; NetworkedAssets GmbH, Berlin, Germany; Newsdesk Media Group, London, United Kingdom; NTG Clarity Networks Inc., Cairo, Egypt; Optima Telekom, Zagreb, Croatia; PacketFront, Kista, Sweden; Perceval, Brussels, Belgium; Praxis High Integrity Systems Ltd., Bath, United Kingdom; Perpara2 America Inc., Miami, FL; Probity Consulting Ltd., Pretoria, South Africa; Professional Computing Resources, Inc. (PCR), Kentwood, MI; Promon Tecnologia, São Paulo, Brazil; PT Wireless Indonesia, Jakarta, Indonesia; RADCOM, Middletown, NJ; B2 Bredband AB, Stockholm, Sweden; BoomBoat Inc., Toronto, Ontario, Canada; boxfusion, London, United Kingdom; Tel Aviv, Israel; Redline Communications, Inc., Markham, Ontario, Canada; Scribax consulting, Stockholm, Sweden; Servei de Telecomunicacions d'Andorra, Santa Coloma, Andorra; SNAP Solutions (M) Sdn Bhd, Kuala Lumpur, Malaysia; Softlab GmbH, Munich, Germany; Softline, Kiev, Ukraine; SoftTerminal, St. Petersburg, Russia; Square Hoop Limited, Wembley, United Kingdom; Switchlab, London, United Kingdom; Sykora Data Center, Ostrava, Czech Republic; Syntax I.T. inc., Attica, Greece; TbayTel, Thunder Bay, Ontario, Canada; TCB Ventures Ltd., Bristol, United Kingdom; Teleca Ltd., Manchester, United Kingdom; TELEMAR NORTE LESTE S.A., Rio de Janeiro, Brazil; Telephone and Data Systems, Inc., Chicago, IL; Terawave Communications, Inc., Hayward, CA; Theta Networks, Inc., Somerset, NJ; T-Mobile Austria GmbH, Vienna, Austria; TrueBaseline Coporation, Pittsburgh, PA; Tshibanda & Associates LLC, Kansas City, MO; Uecomm Ltd., Richmond, Victoria, Australia; University of Strathclyde, Glasgow, United Kingdom; Vodafone Czech Repulic, Prague, Czech Republic; VSNL International, Matawan, NJ; Westport Group, Alpharetta, GA; Xactium Limited, Sheffield, United Kingdom; Xelas software, Marina del Rey, CA; and Zao ''Glasnet'', Moscow, Russia have been added as parties to this venture.

Also, Advance Solutions, Riyadh, Saudi Arabia; AT&T, Burlington Northern Santa Fe Railway, Kansas City, KS; Cape Clear Software, Dublin, Ireland; CH2M Hill, Richmond, United Kingdom; China Netcom Group Labs, Beijing, People's Republic of China; CoManage Corporation, Wexford, PA; Comstar Telecommunications, Moscow, Russia; Consitel, Moscow, Russia; Creation Partnerships Ltd., Fleet, United Kingdom; Duende Inc., Chicago, IL; EMBRATEL-Empresa Brasileira de Telecommunicacoes, Rio de Janeiro, Brazil; Exigen Group, San Francisco, CA; Fair Isaac and Company, Falls Church, VA; Fiberhome Software, Wuhan, People's Republic of China; Gefion, Inc., Vienna, VA; iAxisLimited, Andhra Pradesh, India; IDT Spectrum, Newark, NJ; Intamission Ltd., Windsor, United Kingdom; Internap Network Services, Atlanta, GA; Ipsum Networks, Plano, TX; Keymile, Bern-Liebefeld, Switzerland; LG TeleCom, Seoul, Republic of Korea; Marconi plc, Poole, United Kingdom; Micromuse, Inc., San Francisco, CA; Mobile Tornado Ltd., Mougins, France; MontgomeryCarter Ltd., Finchampstead, United Kingdom; NeuStar, Sterling, VA; Nextel Communications, Herndon, VA; NTL, Hook, United Kingdom; OrgProm LLC, Sverdlovsk, Russia; Osborn. TV, Dallas, TX; Pelagic Group, Singapore, Singapore; Polynetics BV, Hendrik Ido Ambacht, Netherlands; Primal Solutions, Inc., Irvine, CA; QoSmetrics, Massy, France; Sheer Networks Inc., Sunnyvale, CA; Telefonica Empresas S/A, Sao Paulo, Brazil; Telekom Slovenije, Ljubljana, Slovenia; Telynx, Inc., San Francisco, CA; TICO GmbH, Weininger, Switzerland; TimesTen, Inc., Mountain View, CA; Traventec, Galway, Ireland; Ukrainian Mobile Communications UMC, Kiev, Ukraine; Verdonck, Klooster & Associates, Zoetermeer, Netherlands; Vesbridge Partners, Minneapolis, MN; Vidus Limited, Ipswich, United Kingdom; Vodafone Sweden AB, Karlskrona, Sweden; Wanadoo UK, London, United Kingdom; and WebMethods, Inc., Durango, CO have withdrawn as parties to this venture.

The following members have changed their names: Xenicom Ltd. has changed its name to Andrew Network Solutions, Bristol, United Kingdom; NetTest has changed its name to Anritsu A/S, Kanagawa, Japan; SBC Communications Inc. has changed its name to AT&T Inc., San Antonio, TX; AT&T Inc. (incorporating SBC Communications Inc. & AT&T) has changed its name to AT&T Inc., San Antonio, TX; AutoMagic Consulting LLC has changed its name to AutoMagic KB LLC, Denver, CO; Barrett AB has changed its name to Barret AB, Froson, Sweden; Bell South has changed its name to BellSouth, Atlanta, GA; Aprisma Management Technologies has changed its name to CA, Islandia, NY; Computer Associates has changed its name to CA, Islandia, NY; CANTV has changed its name to CANTV.NET, Caracas, Venezuela; Capgemini has changed its name to Capgemini Telecom & Media, Paris, France; Cell Vision has changed its name to CellVision, Oslo, Norway; SESI has changed its name to Celona Technologies Ltd., London, United Kingdom; Cherrysoft Technologies Limited has changed its

name to CherryTec Solutions Limited, Chennai, India; Cominfo has changed its name to Cominfo Consulting, Moscow, Russia; Simtel Technologies Ltd. has changed its name to CommProve Ltd., Dublin, Ireland; Incatel AS has changed its name to Comptel, Helsinki, Finland; CTI-IPsoft has changed its name to CTI-Communications. Technology. Innovations, Moscow, Russia; Defense Information Systems Agency has changed its name to DOD, Arlington, VA; SMARTS has changed its name to EMC, Brentford, United Kingdom; Ernst and Young (CIS) has changed its name to Ernst & Young (CIS) B.V., Moscow, Russia; Tertio Telecommunications has changed its name to Evolving Systems, London, United Kingdom; Fastwire has changed its name to Fastwire Pte Ltd., Singapore, Singapore; William S Greene has changed its name to FineGrain Networks, Ltd., Dallas, TX; Finger point has changed its name to Fingerprint Consultancy, Cairo, Egypt; Flextronics Software Systems Ltd., BSS/OSS BU has changed its name to Flextronics Software Systems Ltd., Gurgaon, India; FORS Training Center CJSC has changed its name to FORS Training Center Company Limited, Moscow, Russia; Glenayre Electronics, Inc. its affiliates, or any other successor companies, has changed its name to Glenayre Technologies, New York, NY; Industria Networks Ltd has changed its name to Industria, Dublin, Ireland; ADC Software Systems has changed its name to Intec Telecom Systems PLC, Minneapolis, MN; ICs Intelligent Communication Software has changed its name to Intelligent Communication Software Entwicklungs GmbH, Munich, Germany; Mariza Dungan has changed its name to Jamcracker, Inc., Santa Clara, CA; kvazar-micro has changed its name to Kvazar-Micro Corporation BV, Amsterdam, Netherlands, Matav Hungarian Telecom Company Ltd. has changed its name to Magyar Telekom, Budapest, Hungary; Mega has changed its name to MEGA International, Paris, France; Mobile Telecommunications Company Kuwait has changed its name to Mobile Telecommunications Company Group, Safat, Kuwait; mtctouch has changed its name to MTC Touch, Beirut, Lebanon, MTN RSA has changed its name to MTN Group, Johannesburg, South Africa; MTN South Africa has changed its name to MTN Group, Johannesburg, South Africa; NSS has changed its name to Network Support Services (NSS), Gauteng, South Africa; Networking Technology Laboratory has changed its name to Networking Technology Laboratory (BUTE), Budapest, Hungary; Nokia Networks has changed its name to Nokia Oyj, Tempere, Finland; Nortel Networks has changed its name to Nortel, Ottawa, Ontario, Canada; Office of Communications has changed its name to Office of Communications (OFCOM), London, United Kingdom; Cognera Ltd. has changed its name to Olista, Natanya, Israel; Cymbal Corporation has changed its name to Patni Computer Services, Fremont, CA; S&T Austria GMGH has changed its name to S&T Austria GmbH, Vienna, Austria; Open Telecommunications Limited has changed its name to S2Net, Sunrise, FL; SAS Global Services has changed its name to SAS Institute Global Services Pvt. Ltd., Mumbai, India; Sed Nobis Asia Pte has changed its name to SNAP Solutions (M) Sdn Bhd, Kuala Lumpur, Malaysia; ACANTHIS has changed its name to SOPRA GROUP, Paris, France; SPIN has changed its name to SPIN SA, Katowice, Poland; Sunrise has changed its name to sunrise, Zurich, Switzerland; Mahindra British Telecom has changed its name to Tech Mahindra, Pune, India; Steleus Group, Inc. has changed its name to Tekelec, Limonest, France; Inet Technologies, Inc. has changed its mane to Tektronix Texas, LLC, Richardson, TX; Teleca OSS AB has changed its name to Teleca Sweden South, Stockholm, Sweden; Telekom Malaysia Berhad (Co. Registration: 128740–P) has changed its name to Telekom Malaysia Berhad, Kuala Lumpur, Malaysia; Telcom Serbia has changed its name to Telekom Serbia, Belgrade, Serbia; Popkin Software & Systems has changed its name to Telelogic, Malmo, Sweden; Telenor AS has changed its name to Telenor ASA, Fornebu, Norway; 4DH Consulting has changed its name to Tigerstripe, Inc., Bellevue, WA; TNO Telecom has changed its name to TNO Information & Communication Technology, Delft, Netherlands; T-Systems International GmbH has changed its name to T-Systems Enterprise Services GmbH, Frankfurt, Germany; Watchmark Corp. has changed its name to Vallent Corporation, Bellevue, WA; Vodacom South Africa has changed its name to Vodacom (Pty) Ltd., Gombe, Democratic Republic of Congo; Mobifon SA has changed its name to Vodafone Romania SA, Bucharest, Romania; and The Westport Group has changed its name to Westport Group, Alpharetta, GA.

The following members have changed their addresses: Aktavara AB has changed its address to Stockholm, Sweden; Atreus Systems has changed its address to Ottawa, Ontario, Canada; Cominfo Consulting has changed its address to Moscow; Russia; Computer Scienes Corporation has changed its address toWeisbaden, Germany; Covad Communications has changed its address to San Jose, CA; CTI-Communications. Technology. Innovations has changed its address to Moscow, Russia; Digital Fuel Technologies, Inc. has changed its address to San Mateo, CA; EMC has changed its address to Hopkinton, MA; Flextronics Software systems Ltd. has changed its address to Haryana, India; Jacobs Rimell has changed its address to London, United Kingdom; MTC Touch has changed its address to Beirut, Lebanon; Nakina Systems has changed its address to Ottawa, Ontario, Canada; NEC Corporation has changed its address to Tokyo, Japan; Telchemy Incorporated has changed its address to Duluth, GA; and Telecom Italia Group has changed its address to Milano, Italy.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on February 16, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 31, 2006 (71 FR 30961).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–8379 Filed 9–29–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,906]

Allianz Sweeper Company, Formerly Known as Johnston Sweeper Company; Chino, California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a

Certification of Eligibility to Apply for Worker Adjustment Assistance on March 23, 2006, applicable to workers of Allianz Sweeper Company, Chino, California. The notice was published in the **Federal Register** on April 12, 2006 (71 FR 18772).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of street cleaning equipment.

The subject firm, originally named Johnston Sweeper Company, became known as Allianz Sweeper Company after Allianz Sweeper Company purchased the assets of Johnston Sweeper in August 2005.

Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax accounts for Johnston Sweeper Company.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Allianz Sweeper Company, formerly known as Johnston Sweeper Company who was adversely affected by a shift in production to Canada.

The amended notice applicable to TA–W–58,906 is hereby issued as follows:

All workers of Allianz Sweeper Company, formerly known as Johnston Sweeper Company, Chino, California, who became totally or partially separated from employment on or after February 21, 2005 through March 23, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of September 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16098 Filed 9–29–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,118]

American Uniform Company, Cleveland, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 21, 2006 in response to a worker petition filed by a company official on behalf of workers at American Uniform Company, Cleveland, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of September, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16104 Filed 9–29–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 12, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 12, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of September 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 9/11/06 and 9/15/06]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
60045	IBM/ITOS Rocklin (Wkrs)	Rocklin, CA	09/11/06	09/08/06
60046	Skip's Cutting, Inc. (Comp)	Ephrata, PA	09/11/06	09/08/06
60047	RR Donnelley (Wkrs)	Lancaster, PA	09/11/06	09/07/06
60048	ITT Industries (Wkrs)	Kenosha, WI	09/11/06	09/08/06
60049	Siemens AG (Union)	Norwood, OH	09/11/06	09/08/06
60050	Five Star Food Service (Wkrs)	Hurt, VA	09/11/06	09/08/06
60051	Cambridge Lee Industry (Comp)	Leesport, PA	09/11/06	08/29/06
60052	Labrie Equipment (Comp)	Appleton, WI	09/11/06	09/11/06
60053	Quality Concepts Manufacturing, Inc. (Wkrs)	Colorado Springs, CO	09/12/06	09/11/06
60054	Schiffer Dental Care Products (Comp)	Agawam, MA	09/12/06	09/11/06
60055	Swift Textiles (Comp)	Midland, GA	09/12/06	09/11/06
60056	Short Bark Industries, LLC (State)	Tellico Plains, TN	09/12/06	09/11/06
60057	City Wear Production, Inc. (Wkrs)	New York, NY	09/12/06	09/09/06

APPENDIX—Continued

[TAA petitions instituted between 9/11/06 and 9/15/06]

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
60058	Akzo Nobel Salt America, Inc. (Wkrs)	Georgetown, SC	09/12/06	08/21/06
60059	Hoover Precision Products, Inc. (Comp)	Washington, IN	09/12/06	09/11/06
60060	Robinson Transformer (Comp)	Robinson, IL	09/12/06	09/11/06
60061	Genesis Engineering and Technologies, Inc. (Comp)	Interlochen, MI	09/12/06	09/11/06
60062	G and G Hosiery (Comp)	Fort Payne, AL	09/12/06	09/05/06
60063	Fisher and Company (State)	Troy, MI	09/12/06	09/05/06
60064	Delphi Corp. (Union)	Columbus, OH	09/12/06	09/11/06
60065	Suntron Midwest Operations (Comp)	Olathe, KS	09/12/06	09/12/06
60066	Source Corp. (Wkrs)	Manchester, KY	09/12/06	09/12/06
60067	Paola Yarns, Inc. (Comp)	Statesville, NC	09/13/06	08/15/06
60068	Burley Design, Inc. (Comp)	Eugene, OR	09/13/06	09/12/06
60069	Cooper Standard Automotive (Union)	Auburn, IN	09/13/06	09/08/06
60070	RAD Electronics, Inc. (Comp)	Hillsboro, OR	09/13/06	09/12/06
60071	J and S Industries, LLC (Wkrs)	Livonia, MI	09/13/06	09/12/06
60072	MJJ Brilliant Jewelers, Inc. (Wkrs)	New York City, NY	09/13/06	09/12/06
60073	Southern Devices (State)	Morganton, NC	09/13/06	09/10/06
60074	Rebtex Company, Inc. (Comp)	East Greenwich, RI	09/13/06	09/12/06
60075	Eaton Corporation (Comp)	Spencer, IA	09/14/06	09/13/06
60076	Medibeg USA, Inc. (Comp)	Mayodan, NC	09/14/06	09/11/06
60077	Oxford Collections (Wkrs)	Gaffney, SC	09/14/06	08/25/06
60078	Weyerhaeuser (Union)	Lebanon, OR	09/14/06	09/13/06
60079	Allied Motion Motor Products (State)	Owosso, MI	09/14/06	09/13/06
60080	Hewlett Packard (State)	Austin, TX	09/14/06	09/11/06
60081	Alma Products Company (Comp)	Alma, MI	09/14/06	09/12/06
60082	Northern Diecast Corp. (State)	Harbor Springs, MI	09/14/06	09/12/06
60083	QPM Aerospace (State)	Portland, OR	09/14/06	09/13/06
60084	Hekman Furniture Co. (Comp)	Grand Rapids, MI	09/14/06	09/13/06
60085	Parker Hannifin (Comp)	Sarasota, FL	09/14/06	09/13/06
60086	Ford Motor Co. (Wkrs)	Dearborn, MI	09/14/06	09/14/06
60087	Wachovia Bank (Wkrs)	Philadelphia, PA	09/15/06	09/14/06
60088	DuPont Automotive Systems (State)	Troy, MI	09/15/06	09/14/06
60089	Jones Apparel Group USA (Wkrs)	Bristol, PA	09/15/06	09/05/06
60090	Klaussner Furniture Industries, Inc. (Comp)	Candor, NC	09/15/06	09/14/06
60091	Bowater Noway (Wkrs)	Benton Harbor, MI	09/15/06	09/14/06
60092	National Instruments (Comp)	Norton, MA	09/15/06	09/14/06
60093	Carhartt, Inc. (Comp)	Madisonville, KY	09/15/06	09/14/06
60094	Goodyear Tire and Rubber Co. (Union)	Union City, TN	09/15/06	09/14/06
60095	Regal Electronics, Inc. (State)	Pocahontas, AR	09/15/06	09/15/06

[FR Doc. E6–16105 Filed 9–29–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,928]

ITT Jabsco Worldwide-Flojet, Currently Known as ITT Marine & Leisure, A Subsidiary of ITT Industries, Including Leased Production Workers From Volt Staffing Agency, Foothill Ranch, California, Now Located in Santa Ana, California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 23, 2006, applicable to workers of ITT Jabsco Worldwide-Flojet, a subsidiary of ITT Industries, including leased production workers from Volt Staffing Agency, Foothill Ranch, California. The notice was published in the **Federal Register** on April 12, 2006 (71 FR 18772).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of small motors and dispensing pumps.

Information provided by the company shows that ITT Jabsco Worldwide-Flojet became known as ITT Marine & Leisure following a merger in mid 2006. The subject firm previously located in Foothill Ranch, California closed and relocated to Santa Ana, California where layoffs are continuing to occur.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of ITT Jabsco Worldwide-Flojet, currently known as ITT Marine & Leisure, a subsidiary of ITT Industries, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–58,928 is hereby issued as follows:

All workers of ITT Jabsco Worldwide-Flojet, currently known as ITT Marine and Leisure, a subsidiary of ITT Industries, including leased on-site production workers from Volt Staffing Agency, Foothill Ranch, California, now located in Santa Ana, California, who became totally or partially separated from employment on or after February 27, 2005, through March 23, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of September 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16099 Filed 9–29–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of September 18 through September 22, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–59,853; Janna Ugone Associates, Easthampton, MA: August 4, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,958; Stanley Fastening Systems, L.P., A Division of Stanley Works, East Greenwich, RI: August 24, 2005.

TA–W–59,961; Agilent Technologies, Global Infrastructure Organization, Santa Rosa, CA: August 25, 2005.

TA–W–59,986; Crane Valve North America, A Division of MCC Holdings, Inc., Washington, IA: August 30, 2005.

TA–W–60,019; Artesyn Technologies, Framingham, MA: September 6, 2005.

TA–W–60,028; WestPoint Home, BED Products Division, Lanett, AL: September 7, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–59,899; Albany International, Seaming Department and Table #8 Unit, Menasha, WI: August 11, 2005.

TA–W–59,916; Federal Mogul Corp., leased workers of Kelly Services and Aerotek, St. Johns, MI: April 17, 2006.

TA–W–59,975; Outdoor Footwear Company, Division of The Timberland Co., Isabella, PR: August 29, 2005.

TA–W–59,982; Bridgestone/Firestone North American Tire, LLC, A Division of Bridgestone/Firestone, Inc., Oklahoma City, OK: August 29, 2005.

TA–W–59,990; Honeywell International, Inc., Honeywell Security and Custom Electronics, Syosset, NY: August 30, 2005.

TA–W–60,006; Bosch Sumter Plant, Automotive Technology Chassis Division, Sumter, SC: September 5, 2005.

TA–W–60,008; BBA Nonwovens Washougal, leased workers of Reemay, Inc., Washougal, WA: September 1, 2005.

TA–W–60,009; Joan Fabrics Corporation, Tyngsboro, MA: September 5, 2005.

TA–W–60,035; Rawlings Sporting Goods Co., Washington, MO: September 7, 1995.

TA–W–59,887; Llink Technologies, LLC, Romeo, MI: August 10, 2005.

TA–W–59,937; Stronglite, Inc., Cottage Grove, OR: August 21, 2005.

TA–W–59,969; Burke E. Porter Machinery, Grand Rapids, MI: August 22, 2005.

TA–W–60,076; Medibeg USA, Inc., Mayodan, NC: September 11, 2008.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–59,853; Janna Ugone Associates, Easthampton, MA.

The Department as determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Since the workers of the firm are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,053; Quality Concepts Manufacturing, Inc., Colorado Springs, CO.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,732; Fibermark, Durable Specialties Division, Quakertown, PA.

TA–W–59,867; Johnson Controls, Interior Experience Division, Mt. Clemens, MI.

TA–W–59,917; Meridian Automotive Systems, Canton, MI.

TA–W–59,497; Unisys Corporation, Roseville, MN.

TA–W–59,817; Synthron, Inc., Morganton, NC.

TA–W–59,696; Metrobility Optical Systems, A Division of Telco Systems, Inc., Merrimack, NH.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C.) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

TA–W–59,756; Volex, Inc., Power Cord Products Div., Clinton, AR.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–59,859; International Business Machines Corp. (IBM), Integrated Technology Delivery (ITD), Lexington, KY.

TA–W–59,927; Toshiba America Business Solutions, A Subsidiary of Toshiba America, Document Solutions Engineering Division, Irvine, CA.

TA–W–60,016; Wachovia Bank, Adjustment Department, Philadelphia, PA.

TA–W–60,066; Source Corp, Manchester Location, Manchester, KY.

TA–W–59,790; Premier Turbines, Div. of Dallas Airmotive, Inc., Neosho, MO.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued from September 18 through September 22, 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 26, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16097 Filed 9–29–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,711]

KPMG LLP, Employed On-Site at Bearing Point, Inc.; Charlotte, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at KPMG LLP, Employed On-Site at Bearing Point, Inc., Charlotte, North Carolina. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,711; KPMG LLP, Employed On-Site at Bearing Point, Inc., Charlotte, North Carolina, (September 22, 2006).

Signed at Washington, DC, this 25th day of September 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16101 Filed 9–29–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,880]

Meredith's Home Fashions; Fall River, MA; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for Trade Adjustment Assistance, the group eligibility requirements in either paragraph (a)(2)(A) or (a)(2)(B) of Section 222 of the Trade Act must be met. It is determined in this case that the requirements of (a)(2)(A) of Section 222 have been met.

The investigation was initiated on August 10, 2006, in response to a petition filed by a company official on behalf of workers of Meredith's Home Fashions, Fall River, Massachusetts. The workers produce window curtains.

The investigation revealed that sales and employment at the subject firm decreased during the period under investigation.

The Department of Labor surveyed the subject firms' major declining customers regarding their purchases of window curtains in 2004, 2005 and January through July 2006 over the corresponding 2005 period. The survey revealed a major customer increased their reliance on imported window curtains during the period under investigation.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In addition, in order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increased imports of window curtains produced by Meredith's Home Fashions, Fall River, Massachusetts contributed importantly to the total or partial separation of workers and to the decline in sales or production at that firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

''All workers of Meredith's Home Fashions, Fall River, Massachusetts, who became totally or partially separated from employment on or after August 2, 2005 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 7th day of September, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16102 Filed 9–29–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,113]

Tower Automotive, Inc., Upper Sandusky, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 21, 2006, in response to a worker petition filed by a company official on behalf of workers at Tower Automotive, Inc., Upper Sandusky, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of September, 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–16103 Filed 9–29–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Fall meetings of the Business Research Advisory Council and its committees will be held October 18 and 19, 2006. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

Wednesday—October 18 (Conference Rooms 7 & 8)

10–11:30 a.m.—Committee on Compensation and Working Conditions

1. Key findings from the most recent benefits release.
2. Key findings and recent improvements in NCS Occupational Pay Relatives.
3. Recent changes in locality wage bulletin tables.
4. Developments in NCS/OES integration.
5. Discussion of agenda items for the Spring 2007 meeting.

1–2:30 p.m.—Committee on Prices Indexes

1. OPLC research on alternative medical care price indexes based on disease treatments.
2. CPI plans to publish index levels to 3-decimal places beginning with the January 2007 index.
3. Impact of house and energy price changes on CPI indexes for rent and owner's equivalent rent.
4. Discussion of agenda items for the Spring 2007 meeting.

3–4:30 p.m.—Committee on Employment and Unemployment Statistics

1. Current Employment Statistics (CES) sub-national data—research into data quality and tentative plans for improvement.
2. BLS employment projections for 2016—discussion of proposed macroeconomic assumptions.
3. BLS-Census business list comparison research—preliminary results.
4. Discussion of agenda items for the Spring 2007 meeting.

Thursday—October 19 (Conference rooms 1 & 2)

8:30–10 a.m.—Committee on Productivity and Foreign Labor Statistics

1. Update on manufacturing compensation costs in China and India.
2. Cross-Country Comparisons of Consumer Price Indexes.
3. Update on International Technical Cooperation.
4. Are Those Who Bring Work Home Really Working Longer Hours?
5. Discussion of agenda items for the Spring 2007 meeting.

10:30 a.m.–12 p.m.—Council Meeting

1. Council chairperson's remarks.
2. Acting Commissioner's remarks.

1:30–3 p.m.—Committee on Occupational Safety and Health Statistics

1. Developments on injury and illness undercount issue.
2. Update on producing new occupational safety and health rate data.
3. Coding of contract workers in injury, illness, and fatality data.
4. Census of Fatal Occupational Injuries 2005 preliminary data.
5. Survey of Occupational Injuries and Illnesses 2005 summary data.
6. Discussion of two recent articles on occupational safety and health issues.
7. Update on survey of workplace violence prevention.
8. Discussion of agenda items for the Spring 2007 meeting.

The meetings are open to the public. Persons wishing to attend these meetings as observers should contact Tracy A. Jack, Liaison, Business Research Advisory Council, at 202–691–5869.

David J. Lacey,

Associate Commissioner for Administration.

[FR Doc. E6–16194 Filed 9–29–06; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388]

PPL Susquehanna, LLC.; Notice of Receipt and Availability of Application for Renewal of Susquehanna Steam Electric Station, Units 1 and 2 Facility Operating License Nos. NPF–14 and NPF–22 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated September 13, 2006, from PPL Susquehanna, LLC., filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Title 10 of the Code of Federal Regulations Part 54 (10 CFR part 54), to renew the operating license (NPF–14 and NPF–22) for the Susquehanna Steam Electric Station, Units 1 and 2. Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for the Susquehanna Steam Electric Station, Units 1 and 2 (NPF–14 and NPF–22) expires on July 17, 2022 and March 23, 2024 respectively. The Susquehanna Steam Electric Station, Units 1 and 2 are boiling water reactors designed by General Electric. The units are located in Berwick, PA. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20582, or electronically from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML062630217. The ADAMS Public Electronic Reading Room is accessible from the NRC's Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html,* on the NRC's Web page, while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209, extension 301–415–4737, or by e-mail to *pdr@nrc.gov.*

A copy of the license renewal application for the Susquehanna Steam Electric Station, Units 1 and 2 is also available to local residents near the Susquehanna Steam Electric Station at the Berwick Public Library, 205 Chestnut Street Berwick, PA 18603.

Dated at Rockville, Maryland, this 26th day of September, 2006.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E6–16138 Filed 9–29–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–425]

Southern Nuclear Operating Company, et al.; Vogtle Electric Generating Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR), part 54, section 54.17(c), for Facility Operating License No. NFP–81, issued to Southern Nuclear Operating Company, Inc., (the licensee), for operation of Vogtle Electric Generating Plant, Unit 2 (Vogtle Unit 2), located in Burke County, Georgia. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirement of 10 CFR 54.17(c), which specifies that an applicant (for the purposes of license renewal, the licensee is the applicant) may apply for a renewed operating license no earlier than 20 years before the expiration of the operating license currently in effect.

The proposed action is in accordance with the licensee's application for an exemption dated May 22, 2006.

The Need for the Proposed Action

In accordance with 10 CFR 54.17(c), the earliest date that the applicant could apply for a renewed operating license for Vogtle Unit 2 would be February 9, 2009. The licensee plans to apply for license renewal for Vogtle Units 1 and 2 on June 28, 2007. Vogtle Unit 1 will have accumulated 20 years operating experience by June 28, 2007 and will meet the requirements of 10 CFR 54.17(c). The proposed exemption for Unit 2 is required to allow the licensee to apply for the renewal of both Vogtle operating licenses concurrently. The request seeks only schedular relaxation without any other substantive reliefs.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the proposed exemption will not have a significant environmental impact. The proposed schedular exemption pertains solely to the future submission of an application to renew the Vogtle 2 operating license. It causes no changes to the current design or operation of Vogtle 2 and imparts no prejudice in the future review of the application for license renewal.

The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

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

This action does not involve the use of any different resources than those previously considered in the Final Environmental Statement (FES) for Vogtle Unit 2, NUREG–1087, ''Final Environmental Statement Related to the Operation of the VEGP [Vogtle Electric Generating Plant], Units 1 and 2,'' dated December 1985.

Agencies and Persons Consulted

In accordance with its stated policy, on August 4, 2006, the staff consulted with the Georgia State official, Mr. Jim Hardeman of the Department of Natural Resources, 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 letter dated May 22, 2006. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents 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 an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of September 2006.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Sr. Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–16137 Filed 9–29–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA. They are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Full Committee Meetings

An agenda will be published in the **Federal Register** for each full Committee meeting. There may be a need to make adjustments to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to make such adjustments to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another meeting day. Persons planning to attend the meeting may contact the Designated Federal Official (DFO) specified in the **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons who plan to submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting but wish to

submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the DFO five days prior to the meeting to allow time for reproduction and distribution.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO. If possible, the request should be made five days before the meeting, identifying the topic(s) on which oral statements will be made and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO.

(d) The use of still, motion picture, and television cameras may be limited to selected portions of the meeting as determined by the Chairman and subject to the condition that the use of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript will be kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. A copy of the certified minutes of the meeting will be available at the same location three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges. ACRS meeting agenda, transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS schedules and agendas).

(f) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, chose to conduct its Subcommittee meetings in accordance with the procedures noted above for ACRS full Committee meetings, as appropriate, to facilitate public participation, and to provide a forum for stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 50 copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Dated: September 26, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–16136 Filed 9–29–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is requesting written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA). The Subcommittee will consider these comments in developing recommendations on AGOA country eligibility for the President. Comments received related to the child labor criteria may also be considered by the Secretary of Labor for the preparation of the Department of Labor's report on child labor as required under section 412(c) of the Trade and Development Act of 2000. This notice identifies the eligibility criteria that must be considered under AGOA, and lists those sub-Saharan African countries that are currently eligible for the benefits of the AGOA, and those that are currently ineligible for such benefits.

DATES: Public comments are due at the Office of the U.S. Trade Representative (USTR) by noon, Friday, October 20, 2006.

ADDRESSES: USTR prefers submission by electronic mail: *FR0269@ustr.eop.gov.* If you are unable to make a submission by

e-mail, submissions should be made by facsimile to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. See requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact Gloria Blue, Office of the U.S. Trade Representative, 600 17th Street, NW., Room F516, Washington, DC 20508, at (202) 395–3475. All other questions should be directed to Constance Hamilton, Deputy Assistant U.S. Trade Representative for Africa, Office of the U.S. Trade Representative, at (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) (19 U.S.C. 3721 *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiary sub-Saharan African countries eligible for duty-free treatment for certain additional products under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (the ''1974 Act'')), as well as for the preferential treatment the AGOA provides for certain textile and apparel articles.

The President may designate a country as a beneficiary sub-Saharan African country eligible for both the additional GSP benefits and the textile and apparel benefits of the AGOA for countries meeting certain statutory requirements intended to prevent unlawful transshipment of such articles, if he determines that the country meets the eligibility criteria set forth in: (1) Section 104 of the AGOA; and (2) section 502 of the 1974 Act. For 2006, 37 countries have been designated as beneficiary sub-Saharan African countries. These countries, as well as the 11 countries currently ineligible, are listed below. Section 506A of the 1974 Act provides that the President shall monitor, review, and report to Congress annually on the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine whether each beneficiary sub-Saharan African country should continue to be eligible, and whether each sub-Saharan African country that is currently not a beneficiary sub-Saharan African country, should be designated as such a country. The President's determinations will be included in the annual report submitted to Congress as required by Section 106 of the AGOA. Section 506A of the 1974 Act requires that, if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the eligibility requirements, he must terminate the designation of the country as a beneficiary sub-Saharan African country.

The Subcommittee is seeking public comments in connection with the annual review of the eligibility of beneficiary sub-Saharan African countries for the AGOA's benefits. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments related to the child labor criteria may also be considered by the Secretary of Labor in making the findings required under section 504 of the 1974 Act.

The following sub-Saharan African countries were designated as beneficiary sub-Saharan African countries in 2006:

Angola
Republic of Benin
Republic of Botswana
Burkina Faso
Burundi
Republic of Cape Verde
Republic of Cameroon
Republic of Chad
Republic of Congo
Democratic Republic of Congo
Republic of Djibouti
Ethiopia
Gabonese Republic
The Gambia
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya
Kingdom of Lesotho
Republic of Madagascar
Republic of Malawi
Republic of Mali
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Sao Tome & Principe
Republic of Senegal
Republic of Seychelles
Republic of Sierra Leone
Republic of South Africa
Kingdom of Swaziland
United Republic of Tanzania
Republic of Uganda
Republic of Zambia

The following sub-Saharan African countries were not designated as beneficiary sub-Saharan African countries in 2006:

Central African Republic
Federal Islamic Republic of Comoros
Republic of Cote d'Ivoire
Republic of Equatorial Guinea
State of Eritrea
Republic of Liberia
Republic of Mauritania
Somalia
Republic of Togo
Republic of Sudan
Republic of Zimbabwe

Requirements for Submissions: In order to facilitate the prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions to *FR0629@ustr.eop.gov* in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile. Persons making submissions by e-mail should use the following subject line: ''2006 AGOA Annual Country Review.'' Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'' and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, Monday through Friday, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m. An appointment to review the file may be made by calling

(202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E6–16132 Filed 9–29–06; 8:45 am]

BILLING CODE 3110–W6–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Membership of the Performance Review Board (PRB)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The following staff members have been appointed to serve on the Performance Review Board:

PERFORMANCE REVIEW BOARD (PRB)

Chair	Fred Ames.
Alternate Chair	Florie Liser.
Member	David Walters.
Executive Secretary	Lorraine Green.

DATES: *Effective Date:* September 26, 2006.

FOR FURTHER INFORMATION CONTACT: Questions regarding this submission should be directed to Lorraine Green, Deputy Assistant U.S. Trade Representative for Administration and Director of Human Resources (202) 395–7360.

Fred Ames,

Assistant U.S. Trade Representative for Administration.

[FR Doc. E6–16133 Filed 9–29–06; 8:45 am]

BILLING CODE 3190–W6–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Items Added to Meeting Agenda

DATE OF MEETING: September 11, 2006.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 71 FR 52591, September 6, 2006.

ADDITION: Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2006–5, Periodicals Nominal Rate Minor Classification Change. At its closed meeting on September 11, 2006, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of these items could be properly closed to public observation.

FOR FURTHER INFORMATION CONTACT: Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000.

Wendy A. Hocking,

Secretary.

[FR Doc. 06–8415 Filed 9–27–06; 4:13 pm]

BILLING CODE 7710–12–M

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, as amended, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Thursday, October 19, 2006, at the Golden Gate Club, 135 Fisher Loop, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to provide an Executive Director's report, to update the status of the Public Health Service Hospital site, to present the fiscal year 2007 work plan, to provide a Tennessee Hollow update, and to receive public comment in accordance with the Trust's Public Outreach Policy.

Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415.561.5300 prior to October 5, 2006.

Time: The meeting will begin at 6:30 p.m. on Thursday, October 19, 2006.

ADDRESSES: The meeting will be held at the Golden Gate Club, 135 Fisher Loop, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415.561.5300.

Dated: September 14, 2006.

Karen A. Cook,

General Counsel.

[FR Doc. E6–16187 Filed 9–29–06; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54510, File No. 4–518]

Joint Industry Plan; Notice of Filing and Order Granting Temporary Effectiveness of Amendment To Plan Establishing Procedures Under Rule 605 of Regulation NMS

September 26, 2006.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 of Regulation NMS,[2] notice is hereby given that on September 14, 2006, the International Securities Exchange, LLC (''ISE'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the national market system plan that establishes procedures under Rule 605 of Regulation NMS (''Joint-SRO Plan'' or ''Plan'').[3] The amendment proposes to add ISE as a participant to the Joint-SRO Plan. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Joint-SRO Plan amendment, and to grant temporary effectiveness to the proposed amendment through January 30, 2007.

I. Description and Purpose of the Amendment

The current participants to the Joint-SRO Plan are the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc. (n/k/a National Stock Exchange℠), The NASDAQ Stock Market LLC, National Association of Securities Dealers, Inc., New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC), Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and Philadelphia Stock Exchange, Inc. The proposed amendment would add ISE as a participant to the Joint-SRO Plan.

ISE has submitted a signed copy of the Joint-SRO Plan to the Commission in accordance with the procedures set forth in the Plan regarding new participants. Section III(b) of the Joint-SRO Plan provides that a national securities exchange or national securities association may become a

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] 17 CFR 242.605. On April 12, 2001, the Commission approved a national market system plan for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Rule 11Ac1–5 under the Act (n/k/a Rule 605 of Regulation NMS). *See* Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

party to the Plan by: (i) Executing a copy of the Plan, as then in effect (with the only changes being the addition of the new participant's name in Section 11(a) of the Plan and the new participant's single-digit code in Section VI(a)(1) of the Plan) and (ii) submitting such executed plan to the Commission for approval.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Joint-SRO Plan amendment 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/nms.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–518 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–518. 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/nms.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Joint-SRO Plan amendment that are filed with the Commission, and all written communications relating to the proposed Joint-SRO Plan amendment 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. Copies of the filing also will be available for inspection and copying at the principal office of 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 4–518 and should be submitted on or before November 1, 2006.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

The Commission finds that the proposed Joint-SRO Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[4] Specifically, the Commission believes that the proposed amendment, which permits ISE to become a participant to the Joint-SRO Plan, is consistent with the requirements of Section 11A of the Act, and Rule 608 of Regulation NMS. The Plan establishes appropriate procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS, available to the public in a uniform, readily accessible, and usable electronic format. The proposed amendment to include ISE as a participant in the Joint-SRO Plan will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by facilitating the uniform public disclosure of order execution information by all market centers.

The Commission finds good cause to grant temporary effectiveness to the proposed Joint-SRO Plan amendment, for 120 days, until January 30, 2007. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow ISE to become a participant in the Joint-SRO Plan. On September 1, 2006, the Commission approved a proposed rule change by the ISE to establish ISE Stock Exchange, LLC (''ISE Stock Exchange'') as an equities trading facility of ISE.[5] As a Plan participant, ISE would have timely information on the Plan procedures as they are formulated and modified by the participants. The Commission finds, therefore, that granting temporary effectiveness of the proposed Joint-SRO Plan amendment is appropriate and consistent with Section 11A of the Act.[6]

[4] In approving this proposed Joint-SRO Plan amendment, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] *See* Securities Exchange Act Release No. 54399 (September 1, 2006), 71 FR 53728 (September 12, 2006). The ISE Stock Exchange consists of a new electronic trading system developed to trade equities and will provide for the electronic execution and display of orders as well as a midpoint matching system. The Commission has published for comment a proposed rule change by ISE to adopt rules and amend existing ISE rules to govern the ISE Stock Exchange. *See* Securities Exchange Act Release No. 54287 (August 8, 2006), 71 FR 46947 (August 15, 1006).

[6] 15 U.S.C. 78k–1.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[7] and Rule 608 of Regulation NMS,[8] that the proposed Joint-SRO Plan amendment is approved for 120 days, through January 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16170 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 242.608.

[9] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of China Energy Savings Technology, Inc.; Corrected Order of Suspension of Trading

September 26, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Energy Savings Technology, Inc. (''China Energy''), a Nevada corporation headquartered in Hong Kong, which trades in the over-the-counter market under the symbol ''CESV.''

Questions have arisen regarding the accuracy and completeness of information contained in China Energy's press releases and public filings with the Commission concerning, among other things: (i) The company's purported ownership and control of its sole asset, Shenzhen Dicken Industrial Development, a manufacturer of energy saving devices located and doing business in the People's Republic of China; and (ii) the existence and/or identity of the company's purported former Chairman and Chief Executive Officer, Mr. Sun Li.

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 company.

Therefore, *it is ordered*, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, September 26, 2006, through 11:59 p.m. EDT, on October 9, 2006.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06–8414 Filed 9–27–06; 4:39 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54507; File No. SR–BSE–2006–36]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Market Opening Pilot Program for the Boston Options Exchange Facility

September 26, 2006.

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 September 1, 2006, the Boston Stock Exchange, Inc. (''BSE'' 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 prepared by the BSE. On September 18, 2006, the BSE filed Amendment No. 1 to the proposed rule change.[3] 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

The BSE is proposing to retroactively reinstate the pilot program related to market opening procedures on the Boston Options Exchange facility.[4] The pilot program expired on August 6, 2006. The BSE is proposing to retroactively reinstate the pilot program for the time period August 6, 2006 through September 1, 2006. The BSE does not propose to make any substantive changes to the pilot program rules. The only change to be achieved by this rule filing is to retroactively reinstate the pilot program for the time period August 6, 2006 through September 1, 2006.[5]

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 BSE included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 6, 2006 the market opening procedures pilot program expired. The purpose of this proposed rule change is to retroactively reinstate the market opening procedures pilot program for the time period August 6, 2006 through September 1, 2006 so as to avoid an interruption in that pilot program. The BSE is not proposing any other changes to the market opening procedures pilot with this filing.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b) of the Act[6] in general, and Section 6(b)(5) of the Act[7] in particular, that an exchange have rules that are designed to prevent fraudulent and manipulative 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will avoid an interruption of the pilot program which provides a quicker, more efficient, fair and orderly market opening process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change, as amended, 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

The BSE did not receive any written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended; or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–BSE–2006–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2006–36. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] The BSE filed another proposed rule, SR–BSE–2006–37, in order to extend the market opening procedures pilot program from September 1, 2006 to August 6, 2007. *See* Securities Exchange Act Release No. 54467 (September 20, 2006).

[5] The Commission has previously approved proposals to extend pilot programs on a retroactive basis when an extension was not filed prior to the expiration date. *See* Securities Exchange Act Release No. 50097 (July 27, 2004), 69 FR 46609 (August 3, 2004) (File No. SR–NASD–2004–112).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2006–36 and should be submitted on or before October 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16164 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54505; File No. SR–BSE–2006–40]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Information Submitted to the Exchange

September 26, 2006.

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 September 15, 2006, the Boston Stock Exchange, Inc. (''BSE'' 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 prepared by the Exchange. The BSE has filed the proposed rule change, pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 17 CFR 200.30–3(a)(12).

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 15 (Audit Trail) of Chapter V of the Rules of the Boston Options Exchange (''BOX'') to delete the language that specifically references the two specific participant capacity codes and the three specific customer identification codes. The text of the proposed rule change is available on the BSE's Web site at *http://www.bostonstock.com*, at the principal office of the Exchange and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that the proposed rule change mimics the Chicago Board Options Exchange (''CBOE'') Rule 6.51[5] and the International Securities Exchange, Inc. (''ISE'') Rule 712[6] and proposes to amend Section 15 (Audit Trail) of Chapter V of the BOX Rules to delete the language that specifically references the two specific participant capacity codes and the three specific customer identification codes.[7]

Chapter V, Section 15 of the BOX Rules requires members to file with BOX order information in such form as may be prescribed by the Exchange. Among the ''order information'' that the rule requires to be marked on an order ticket[8] includes ''participant capacity'' and ''customer identification.'' The purpose of these marking requirements is primarily twofold. First, participant capacity codes and customer identification codes ensure that orders route to the proper exchange systems, provide the Boston Options Exchange Regulation LLC (''BOXR'') with a mechanism by which to surveil whether members are in fact marking orders correctly and provide BOX with customer information. Second, the marking requirements assist the Options Clearing Corporation (''OCC'') in the clearance of trades.

BSE currently lists two participant capacity codes in Chapter V, Section 15(b)(vi) of the BOX Rules and three customer identification codes in Chapter V, Section 15(b)(viii) of the BOX Rules.[9] Because BOX's participant capacity codes and customer identification codes are specifically listed in its rules, each time BOX determines to add, delete, or change a participant capacity code or customer identification code, BSE must submit a rule filing to the Commission. This could require several separate rule filings if BOX decided to add participant capacity codes and customer identification codes at different times.[10]

Accordingly, since Chapter V, Section 15(a) of the BOX Rules already provides that ''each Options Participant shall submit order information in such form as may be prescribed by BOXR. * * *,''[11] BSE proposes to delete the language from Chapter V, Section 15(b)(vi) and (viii) of the BOX Rules that references the two specific participant capacity codes and three specific customer identification codes. This change will have two primary effects. First, it would eliminate the need for BSE to submit a rule filing each time BOX adds, deletes or changes a participant capacity code or customer identification code. Second, and more importantly, it would allow BSE to continue to ensure that members submit requisite trade information, including participant capacity codes and customer

[5] *See* Securities Exchange Act Release No. 45226 (January 3, 2002), 67 FR 1383 (January 10, 2002) (SR–CBOE–2001–69).

[6] *See* Securities Exchange Act Release No. 43795 (January 3, 2001), 66 FR 2468 (January 11, 2001) (SR–ISE–00–21).

[7] Currently, BOX Rules Chapter V, Section 15(b)(vi) and (viii) state that order information submitted under BOX Rule Chapter V, Section 15 must include certain specific participant capacity codes and customer identification codes.

[8] All order tickets are submitted to BOX in electronic form.

[9] BOX currently uses the following participant capacity codes: (1) Order Flow Provider or (2) Market Maker. *See* BOX Rules Chapter V, Section 15(b)(vi). BOX currently uses the following customer identification codes: (1) Public Customer; (2) Broker-dealer; or (3) Market Maker. *See* BOX Rules Chapter V, Section 15(b)(viii).

[10] Over the next few months, the Exchange anticipates adding several new identification codes to the BOX system. This could require the submission of several rule filings if all participant capacity and customer identification codes are not added at the same time.

[11] *See* BOX Rules Chapter V, Section 15(a).

identification codes, in an Exchange-dictated manner. BSE notes that the proposed change to Chapter V, Section 15(b)(vi) and (viii) would not eliminate the requirement that members submit tickets with participant capacity codes and customer identification codes. Rather, this change simply eliminates the specific participant capacity codes and customer identification codes from Chapter V, Section 15(b)(vi) and (viii) of the BOX Rules. Options Participants would still be required to submit orders with participant capacity codes and customer identification codes as may be prescribed by BOXR.

Upon approval of this filing, BSE will notify members of the current order marking requirements (*i.e.*, valid participant capacity codes and customer identification codes) by regulatory circular. As such, each time BOX adds, deletes, or changes a participant capacity code or customer identification code, BSE will distribute a regulatory circular to the Options Participants apprising them of the change. BSE believes that this will ensure that BOX's Options Participants are aware of the applicable participant capacity codes and customer identification codes with which it must mark order tickets.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange believes that the proposed rule change would enhance BOX's ability to surveil for and investigate potential fraudulent and manipulative conduct. The Exchange further believes that, since the proposed rule change would enhance BOX's ability to conduct investigations and surveil for misconduct, it would protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interests, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

BSE requests that the Commission waive both the 30-day pre-operative period specified in Rule 19b–4(f)(6)(iii).[16] The Commission believes that waiving the 30-day pre-operative period is consistent with the protection of investors and public interest. BSE's proposed deletion of the language from Chapter V, Section 15(b)(vi) and (viii) of the BOX Rules that references certain specific participant capacity and customer identification codes allows for greater Exchange flexibility in administering its order ticket marking rules while maintaining the underlying requirements. According to the Exchange, this change will eliminate the need for BSE to submit a rule filing each time BOX adds, deletes or changes a participant capacity code or customer identification code and will allow BSE to continue to ensure that members submit requisite trade information, including participant capacity codes and customer identification codes, in an Exchange-dictated manner. The change is also consistent with the approaches used by other self-regulatory organizations.[17] For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[18]

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.[19]

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–BSE–2006–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2006–40. 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. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BSE–2006–40 and should

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See* n. 5–6, supra.

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

be submitted on or before October 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16165 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54494; File No. SR–CHX–2006–23]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Regarding Amendments to the Exchange's Bylaws and Other Governance Changes

September 25, 2006.

I. Introduction

On June 22, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its bylaws and rules to make several governance changes. The CHX filed Amendment No. 1 to the proposed rule change on July 20, 2006. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 3, 2006.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

CHX proposes changes to its bylaws to reflect the terms of an agreement with four firms (''Investor Firms'')[4] to invest in CHX Holdings, Inc., (''CHX Holdings'').[5] CHX proposes to amend its bylaws and rules to (1) require the Exchange's Board of Directors (''Board'') to identify one position in each Board class as the ''Subject to Petition (STP) Participant Director,'' with candidates for that position to be subject to a petition process involving the Exchange's participants; (2) change the composition of the Exchange's Nominating & Governance Committee to include two public directors and two STP Participant Directors; and (3) modify the Exchange's rules to confirm that each participant firm would need only one trading permit to conduct business on the Exchange.

Governance Changes

The CHX bylaws provide that the CHX Board currently consist of the Exchange's chief executive officer, seven public directors, and five participant directors.[6] The Board members are divided into three classes, with each class serving a three-year term. Under the terms of the agreements reached with the Investor Firms, the membership of the Board is to be reduced by one director, so that after the closing of the transactions, the Board would consist of the Exchange's chief executive officer, six public directors, and five participant directors. The agreements with the Investor Firms also require the Exchange to use its best efforts to place a representative of each of the Investor Firms on the CHX Board, filling four of the five participant director positions. The remaining participant director would not be affiliated with any of the Investor Firms.

STP Participant Directors

Under the Exchange's existing bylaws, the Nominating & Governance Committee (''Committee'') identifies candidates to fill the Board positions that are up for election each year.[7] In identifying candidates for public director positions, the Committee typically meets to discuss candidates and provides its slate of nominees to the Exchange's sole stockholder, CHX Holdings, for election.

The process for identifying candidates for participant director positions, however, is more detailed and includes both a requirement that the Committee hold two open meetings with Exchange participants and a petition process that allows participants to add names to the Committee's initial slate.[8] Under this process, no later than 60 days prior to the date announced for the Exchange's annual shareholder meeting, the Committee's initial nominees for participant director positions are reported to the Exchange's Secretary, who then must promptly announce the nominees to the Exchange's participants.[9] Participants may identify other candidates for one or more of these positions by delivering to the Exchange's Secretary, at least 35 days prior to the date announced for the annual meeting of shareholders, a written petition, signed by at least ten participants, identifying additional candidates.[10] If one or more valid petitions are submitted, the Exchange conducts an election to confirm the participants' selections of nominees for the participant director positions.[11]

Each participant has one vote with respect to each participant director position that is to be filled. The individuals having the largest number of votes are the final nominees, and the Nominating & Governance Committee must nominate these persons to fill the available positions.[12] This process is designed to provide Exchange participants with fair representation in the selection of Exchange directors.[13]

The Exchange proposes to amend its bylaws to require the Board to set aside one position in each Board class for an STP Participant Director, with the candidates for each of those positions to be subject to the petition process. The Exchange acknowledges that the proposal would reduce the number of participant directors whose elections are subject to this petition process, but maintains that it would still ensure that at least 20% of the Exchange's directors (on a Board of fifteen or fewer people)

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 54226 (July 27, 2006), 71 FR 44064 (''Notice'').

[4] Each investment represents a minority equity stake in CHX Holdings consisting of shares of CHX Holdings Series A Preferred Stock.

[5] *See* Securities Exchange Act Release No. 51149 (Feb. 8, 2005), 70 FR 7531 (Feb. 14, 2005) (order approving Exchange's demutualization). As part of the demutualization, former CHX members received common stock in CHX Holdings and received CHX trading permits entitling them to maintain their access to the Exchange. In addition, other persons who satisfy the applicable requirements were granted the ability to obtain trading permits, regardless of whether they are shareholders in CHX Holdings. Persons who hold trading permits are now referred to as Exchange ''participants.'' For purposes of the Act, participants are considered to be members of the Exchange. *See* Rule 1.l of Article I of the CHX Rules. *See also infra* note 6.

[6] *See* Article II, Section 2(c) of the Exchange's bylaws. A ''public director'' is a director who (i) is not a participant in the Exchange, or an officer, managing member, partner or employee of an entity that is a participant, (ii) is not an employee of the Exchange or any of its affiliates, (iii) is not a broker or dealer or an officer or employee of a broker or dealer, or (iv) does not have any other material business relationship with CHX Holdings or the Exchange (or with any of their affiliates) or with any broker or dealer. *See* Article II, Section 2(b) of the Exchange's bylaws. A ''Participant Director'' is a director who is a participant or an officer, managing member, or partner of an entity that is a participant. *Id.* An individual or entity is a participant in the Exchange if that individual or entity holds a trading permit issued by the Exchange. *Id.*

[7] *See* Article II, Section 3(b) of the Exchange's bylaws.

[8] *See* Article II, Section 3(d) of the Exchange's bylaws.

[9] *See id.*

[10] *See id.*

[11] *See id.*

[12] *See* Article II, Section 3(b) and (e) of the Exchange's bylaws.

[13] *See* 15 U.S.C. 78f(b)(3) (requiring that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs).

are selected in this manner.[14] In addition, by requiring that the Board identify one position in each of the three Board classes to be subject to the petition process, the proposal would allow participants an opportunity to select at least one participant director each year.

Composition of the Nominating & Governance Committee

The Exchange's Nominating & Governance Committee currently is composed of six Board members—three participant directors and three public directors.[15] The Exchange proposes to reduce its size so that it consists of two public directors and two STP Participant Directors.[16] Under the proposal, at least one participant director who is not affiliated with any of the four Investor Firms will serve on the Committee by requiring that one of the STP Participant Directors on the Committee not be a representative of any of the Investor Firms.

Trading Permits

Under the Exchange's existing rules, each participant firm or each person who is registered as a co-specialist, floor broker, or market maker for a participant firm must hold a valid trading permit.[17] The Exchange proposes to change this requirement so that each participant firm must hold a valid trading permit, but individuals who serve as co-specialists, floor brokers, and market makers for a firm are no longer subject to the requirement.[18] Persons who serve in these capacities would continue to be required to register with the Exchange.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[20] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission also finds that the proposed rule change is consistent with Section 6(b)(3) of the Act,[21] which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The proposed rule change contemplates that three of the twelve members, or at least 20%, of the Exchange's Board, will be STP Participant Directors, one in each of the Board's three classes.[22] In addition, the Commission believes that the petition process for nominating STP Participant Directors affords Exchange participants a fair role in the selection of the Exchange's participant directors. Further, the Commission notes that because one class of the Board stands for election each year, and each Board class has one STP Participant Director, participants will be able to select an STP Participant Director each year. In addition, the filling of any STP Participant Director vacancies will be subject to the petition process. Accordingly, the Commission believes that the designation of three of the Exchange's twelve directors as STP Participant Directors, as well as the manner in which such directors will be nominated and elected, satisfies the fair representation requirement in Section 6(b)(3) of the Act.[23]

The Exchange also proposes to reduce the size of the Nominating & Governance Committee from six to four members. The Commission notes that two of the four members, or 50%, of the Committee will be public directors, thus preserving the current percentage of public directors on the Committee. The Commission also notes that one of the two participant directors on the Committee is not a representative of any of the Investor Firms to preserve fair representation on the Committee. The Commission finds that the composition of the Committee is consistent with Section 6(b)(3) of the Act.[24]

The Exchange also proposes to change its rules so that only participants firms, and not individuals, must hold a trading permit in order to be able to trade on the Exchange.[25] The Exchange has stated that the reason for the proposed change is to reduce the number of trading permits to be more consistent with other exchanges that operate automated markets. The Commission has approved similar proposed rules for other markets,[26] and believes that the Exchange's proposal is similarly consistent with the Act.

Section 6(b)(3) of the Act also requires that one or more directors of an exchange shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.[27] The proposed changes to the Exchange's Board provide that six of the twelve Exchange directors will be ''public directors.'' [28] The Commission notes that public directors still must comprise 50% of the Exchange's Board under the proposal. Accordingly, the Commission finds the proposed rule change consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–CHX–2006–23), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16113 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

[14] *See* Securities Exchange Act Release No. 50699 (Nov. 18, 2004), 69 FR 71126 (Dec. 8, 2004) (''SRO Governance Release''). In note 148 of the SRO Governance Release, the Commission states, among other things, that it has taken the position that the fair representation requirement could be satisfied if an exchange's rules provide that members constitute at least 20% of the individuals serving on an exchange's nominating committee.

[15] *See* Article II, Section 3(a) of the Exchange's bylaws.

[16] *See* proposed amendment to Article II, Section 3(a) of the Exchange's bylaws.

[17] *See* Article II, Rule 2(a).

[18] *See* Article VI, Rule 2(b)(7) (replacing the concept of a firm's ''nominee'' with a specific reference to persons serving as co-specialists, market makers or floor brokers).

[19] In approving this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(3).

[22] *See* SRO Governance Release, *supra* note 14.

[23] 15 U.S.C. 78f(b)(3).

[24] *Id.*

[25] *See supra* Part II (''One Trading Permit per Participant'').

[26] *See, e.g.,* NYSE Arca Rule 1(n) (defining ''ETP Holder''); NSX Rule 1.5E(1) (defining the term ''ETP''); NSX Rule 1.5P(1) (defining ''person associated with an ETP Holder'').

[27] 15 U.S.C. 78f(b)(3).

[28] *See supra* note 6. Presently, the Exchange's Board is comprised of thirteen directors, seven of whom are public directors.

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54495; File No. SR–CHX–2006–27]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Retroactive Application of Participant Fees and Credits

September 25, 2006.

On August 10, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make retroactive to February 9, 2005, the trading permit fee due to the Exchange if a CHX participant's trading permit is cancelled intra-year. The proposed rule change was published for comment in the **Federal Register** on August 23, 2006.[3] The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which requires that the rules of an exchange provide for the equitable allocation or reasonable dues, fees and other charges among its members and other persons using its facilities.

The proposal to permit CHX participants to pay the Exchange the lesser of $2,000 or the remaining balance of the annual trading permit fee if cancelled intra-year originally became effective on October 24, 2005.[6] The Exchange intended but did not request retroactive application of this amended Fee Schedule when the rule change was originally filed with the Commission. The Exchange believes that CHX participants who terminated their permits intra-year are entitled to a refund. Further, the Exchange has been reserving funds for such remuneration. The Commission therefore finds that it is appropriate to make retroactive to February 9, 2005, the Fee Schedule change as described above.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CHX–2006–27) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16114 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54323 (August 16, 2003), 71 FR 49495.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(4).

[6] *See* Securities Exchange Act Release No. 52815 (November 21, 2005), 70 FR 71572 (November 29, 2005) (SR–CHX–2005–31).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54487; File No. SR–FICC–2005–17]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change Relating to Assumption of Blind Brokered Fails by Its Government Securities Division

September 22, 2006.

I. Introduction

On September 30, 2005, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on November 28, 2005, amended proposed rule change SR–FICC–2005–17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on March 8, 2006.[2] On August 15, 2006, FICC filed an amendment to the proposed rule change.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of the proposed rule change is to clarify the practice of the Government Securities Division (''GSD'') of FICC of assuming certain blind brokered repo fails and of obtaining financing as necessary in connection with such assumptions. The settlement of the start leg of a same-day starting repo has always been and continues to be processed outside of the GSD. In the evening of the day of a same-day starting brokered repo, FICC will assume responsibility from the broker for the settlement of such start leg if the repo dealer has not delivered securities to the broker to start the repo (*i.e.*, the start leg has failed). This may involve FICC's receipt of securities from the repo dealer for redelivery to the reverse repo dealer or FICC's netting or pairing off of the settlement obligation arising from the start leg against the settlement obligation arising from the close leg of the same or another repo.

FICC will also assume a blind brokered repo fail that arises in the close leg of a blind brokered repo transaction. For example, if the start leg of the transaction settles outside of FICC in normal course but one side of the close leg does not compare (for any reason that would cause a trade to not compare such as the erroneous submission of trade data), the broker will have a net settlement position at FICC rather than netting flat. If that transaction fails to settle, FICC will assume the broker's fail.

FICC assumes the fails in these instances in order to decrease risk to itself and to its members.[4] By assuming the fail, FICC removes the broker, which acts as an intermediary and which expects to net out of every transaction and not have a settlement position, from the settlement process.[5] FICC is therefore adding a provision to its Rules to expressly provide for its practice of assuming blind broker repo fails and therefore to make its Rules consistent with its current and longstanding practice.[6]

In the assumption of such broker fails, the need for financing might arise, such as in the situation where the repo dealer delivers securities near the close of the securities Fedwire and the broker is unable to redeliver them to the reverse repo dealer. The GSD's Rules already contain a provision, Section 8 of Rule 12, that addresses the GSD's need to obtain financing in general. This provision contemplates the need for financing in order to allow the GSD to facilitate securities settlement generally. It is important to note that such financing is part of the GSD's normal course of business, and the GSD's ability to obtain such financing is necessary for

[1] Securities Exchange Act Release No. 53396 (March 2, 2006), 71 FR 11694.

[2] The August 15, 2006, amendment, as noted below, is not substantive and did not require republication of notice.

[3] FICC has engaged in the practice of assuming broker fails since the inception of its blind brokered repo service.

[4] FICC filed its August 15, 2006, amendment to the proposed rule change to make explicit its policy that in all cases where FICC assumes a fail from a broker, the counterparty remains responsible for its obligations with respect to the transaction.

[5] Specifically, new Section 5, ''Assumption of Blind Brokered Fails,'' is being added to GSD Rule 19.

it to be able to complete securities settlement. Section 8 of Rule 12 provides that if FICC deems it appropriate to obtain financing to provide its securities settlement services, FICC may create security interests in eligible netting securities delivered by a netting member in order to obtain such financing. The provision requires that members not take any action to adversely affect this process. The provision also states that such security interests may be created to obtain financing in an amount greater than the obligation of a member to FICC relating to such eligible netting securities. Thus, clearing fund securities may also be used to collateralize such financing. Also, Section III.C of the GSD's fee structure provides the formula that the GSD uses to charge members for the cost of any financing obtained by GSD.

FICC interprets Section 8 of Rule 12 and Section III.C. to apply to financing that might arise because of FICC's assumption of blind brokered fails. FICC does not believe that actual changes to this rule is necessary for this clarification.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[7] The Commission finds that FICC's proposed rule change is consistent with this requirement because the change, which is designed to clarify FICC's practice of assuming failed blind brokered repo transactions, will facilitate the settlement of blind brokered repo fails and as such will facilitate the prompt and accurate clearance and settlement of these transactions. By facilitating the settlement of these fails, FICC will also reduce settlement risk, which will better enable it to assure the safeguarding of securities and funds which are in FICC's custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

[7] 15 U.S.C. 78q–1(b)(3)(F).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change, as amended, (File No. SR–FICC–2005–17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16109 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54500; File No. SR–NASDAQ–2006–025]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Regarding Fees for the New Nasdaq Workstation and Weblink ACT

September 25, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq amended the proposed rule change on September 20, 2006.[3] Pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder, Nasdaq has designated the proposed rule change as establishing or changing a member due, fee, or other charge, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1. The effective date of the original proposed rule change is August 1, 2006 and the effective date of the amendment is September 20, 2006. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on September 20, 2006, the date Nasdaq filed Amendment No. 1. *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify fees for the New Nasdaq Workstation (''NNW'') and Weblink ACT. Nasdaq will implement the proposed rule change on August 1, 2006. The text of the proposed rule change is available at the Commission's Public Reference Room, at Nasdaq, and at *http://www.nasdaq.com.*[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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 is amending Rule 7015 to change fees associated with its web-based New Nasdaq Workstation (''NNW'') and Weblink ACT products. Since the NNW's inception as a replacement for the Nasdaq Workstation II (''NWII'') last year, the fee for the NNW has been $435 per user per month, plus $90 per month for data feeds included with the NNW, for a total cost of $525 per user per month. Nasdaq is now reducing the fee to $475 per user per month, including the cost of the data feeds provided with the NNW. The change is designed to enhance the competitiveness of the NNW in contrast to front-end applications provided by broker-dealers and service bureaus, and, as discussed below, also reflects decreasing demand for the product.

Weblink ACT, also referred to as Nasdaq Workstation Post Trade, is a Web-based application used for

[6] Changes to the proposed rule text are marked to the rule text that appears in the electronic Nasdaq Manual found at *www.complinet.com/nasd.com* as further amended on an immediately effective basis by SR–NASDAQ–2006–024. Because the Nasdaq Workstation and Weblink ACT are also used with respect to the quotation, execution, and trade reporting systems operated by The Nasdaq Stock Market, Inc. (''Nasdaq Inc.'') with respect to non-Nasdaq securities, Nasdaq Inc. is also filing these proposed rule changes as a modification to NASD Rule 7010(f). *See* SR–NASD–2006–094.

submission of trade reports. As such, as Nasdaq begins to operate as a national securities exchange, Weblink ACT provides basic front-end access to the Trade Reporting Facility (''TRF'') operated by Nasdaq and the National Association of Securities Dealers, Inc. (''NASD''),[7] as well as access to ACT functionality still offered by Nasdaq Inc. under authority delegated by NASD.

Since the introduction of NNW and Weblink ACT, a number of former NWII users have opted to move to Weblink ACT rather than NNW, reflecting a desire to use these Web-based products exclusively for trade reporting, rather than active trading. Accordingly, Nasdaq proposes to increase the comparatively low fees for Weblink ACT to ensure that, as between NNW and Weblink ACT, fees are allocated appropriately to allow recovery of Nasdaq's costs. Specifically, the current $150 fee for Weblink ACT users that report a daily average of 20 or fewer trades during a month is being raised to $200, while the $300 fee for higher volume users is being increased to $375.

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)(4) of the Act,[9] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The proposed rule change reflects demand patterns for NNW and Weblink ACT and is designed to ensure that as between the products, fees are allocated appropriately to allow recovery of Nasdaq's costs.

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, as amended.

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.

[7] Nasdaq expects that, consistent with current practice, most NASD members seeking access to the TRF would use a proprietary front-end system developed by the broker-dealer or a product offered by a service bureau. Weblink ACT is designed as a basic front-end system for low volume users.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder,[11] in that the proposed rule change establishes or changes a member due, fee, or other charge. 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–NASDAQ–2006–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–025. 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. Copies of such 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–2006–025 and should be submitted on or before October 23, 2006.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16115 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54501; File No. SR–NASDAQ–2006–026]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Amended Regarding Pricing for Non-Members Using the New Nasdaq Workstation and Weblink ACT

September 25, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq amended the proposed rule change on September 20, 2006.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and simultaneously granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change relates to the pricing for non-Nasdaq members using Nasdaq's New Nasdaq Workstation (''NNW'') and Weblink ACT products. The proposal will apply to these non-members the same changes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1.

that Nasdaq is instituting for Nasdaq members in SR–NASDAQ–2006–025. Nasdaq seeks to implement this proposed rule change retroactively as of August 1, 2006. The text of the proposed rule change is available at the Commission's Public Reference Room, at Nasdaq, and at *http://www.nasdaq.com*.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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 III below. Nasdaq 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

In SR–NASDAQ–2006–025, Nasdaq amended Rule 7015 to change Nasdaq member fees associated with its Web-based NNW and Weblink ACT products. Since the NNW's inception as a replacement for the Nasdaq Workstation II (''NWII'') last year, the fee for the NNW has been $435 per user per month, plus $90 per month for data feeds included with the NNW, for a total cost of $525 per user per month. In SR–NASDAQ–2006–025, Nasdaq reduced the fee to $475 per user per month, including the cost of the data feeds provided with the NNW. The change is designed to enhance the competitiveness of the NNW in contrast to front-end applications provided by broker-dealers and service bureaus, and, as discussed below, also reflects decreasing demand for the product.

Weblink ACT, also referred to as Nasdaq Workstation Post Trade, is a Web-based application used for submission of trade reports. As such, as the Nasdaq Exchange begins to operate as a national securities exchange, Weblink ACT provides basic front-end access to the Trade Reporting Facility (''TRF'') operated by Nasdaq and the NASD,[5] as well as access to ACT functionality still offered by Nasdaq Inc. under authority delegated by NASD.

Since the introduction of NNW and Weblink ACT, a number of former NWII users have opted to move to Weblink ACT rather than NNW, reflecting a desire to use these Web-based products exclusively for trade reporting, rather than active trading. Accordingly, in SR–NASDAQ–2006–025, Nasdaq increased the comparatively low fees for Weblink ACT to ensure that, as between NNW and Weblink ACT, fees are allocated appropriately to allow recovery of Nasdaq's costs. Specifically, the current $150 fee for Weblink ACT users that report a daily average of 20 or fewer trades a month is being raised to $200, while the $300 fee for higher volume users is being increased to $375.

Nasdaq is submitting this filing to apply the foregoing changes to non-Nasdaq members using the NNW and Weblink ACT. These non-members are comprised primarily of service bureaus, while in the case of Weblink ACT, they would also include NASD members that are not members of Nasdaq but that submit trade reports to the TRF.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The proposed rule change applies to non-members that use NNW and Weblink ACT a fee change that is being implemented for Nasdaq members. Accordingly, the proposed rule change promotes an equitable allocation of fees between members and non-members using these services.

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, as amended.

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. 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–2006–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–026. 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. Copies of the filing also will be available for inspection and copying at the principal offices of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–026 and should be submitted on or before October 23, 2006.

[4] Changes to the proposed rule text are marked to the rule text that appears in the electronic Nasdaq Manual found at *www.complinet.com/nasd.com*, as further amended on an immediately effective basis by SR–NASDAQ–2006–024 and SR–NASDAQ–2006–025. Because the NNW and Weblink ACT are also used with respect to the quotation, execution, and trade reporting systems operated by The Nasdaq Stock Market, Inc. (''Nasdaq Inc.'') with respect to non-Nasdaq securities, Nasdaq Inc. is also filing this proposed rule change as a modification to NASD Rule 7010(f). *See* SR–NASD–2006–095.

[5] Nasdaq expects that, consistent with current practice, most NASD members seeking access to the TRF would use a proprietary front-end system developed by the broker-dealer or a product offered by a service bureau. Weblink ACT is designed as a basic front-end system for low volume users.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to an exchange.[8] Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal would permit the schedule for non-Nasdaq members to mirror the schedule applicable to Nasdaq members that became effective on August 1, 2006, pursuant to SR–NASDAQ–2006–025.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice thereof in the **Federal Register**. The proposed fees for non-Nasdaq members are identical to those in SR–NASDAQ–2006–025, which implemented those fees for Nasdaq members and which became effective as of August 1, 2006. The Commission notes that the instant proposed rule change will promote consistency in Nasdaq's fee schedule by applying simultaneously the same pricing schedule for Nasdaq members and non-Nasdaq members alike. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2006–026), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16117 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54498; File No. SR–NASD–2006–095]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Regarding Fees for Non-NASD Member Subscribers to the New Nasdaq Workstation and Weblink ACT

September 25, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq amended the proposed rule change on September 20, 2006.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and simultaneously granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify fees for non-NASD member subscribers to the New Nasdaq Workstation (''NNW'') and Weblink ACT. The proposed rule change will apply to these non-members the same changes that Nasdaq is instituting for members.[4] Nasdaq seeks to implement the proposed rule change retroactively as of August 1, 2006. The text of the proposed rule change is available at the Commission's Public Reference Room, at NASD, and at *http://www.nasd.com*.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1.

[4] *See* SR–NASD–2006–094.

[5] Changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com*, as modified on an immediately effective basis by SR–NASD–2006–094. Nasdaq is filing this proposed rule change because the NNW and Weblink ACT may be used in limited circumstances by service bureaus that are not NASD members with respect to the quotation, execution, and trade reporting systems operated by Nasdaq with respect to non-Nasdaq securities. The NASDAQ Stock Market LLC (''Nasdaq Exchange'') is also filing a comparable modification to Nasdaq Exchange Rule 7015.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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 III below. Nasdaq 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

In SR–NASD–2006–094, Nasdaq amended Rule 7010 to change NASD member fees associated with its Web-based New Nasdaq Workstation (''NNW'') and Weblink ACT products. Since the NNW's inception as a replacement for the Nasdaq Workstation II (''NWII'') last year, the fee for the NNW had been $435 per user per month, plus $90 per month for data feeds included with the NNW, for a total cost of $525 per user per month. In SR–NASD–2006–094, Nasdaq reduced the fee to $475 per user per month, including the cost of the data feeds provided with the NNW. The change is designed to enhance the competitiveness of the NNW in contrast to front-end applications provided by broker-dealers and service bureaus, and, as discussed below, also reflects decreasing demand for the product.

Weblink ACT, also referred to as Nasdaq Workstation Post Trade, is a Web-based application used for submission of trade reports. As such, as the Nasdaq Exchange begins to operate as a national securities exchange, Weblink ACT provides basic front-end access to the Trade Reporting Facility (''TRF'') operated by Nasdaq and the NASD,[6] as well as access to ACT functionality still offered by Nasdaq under authority delegated by NASD.

Since the introduction of NNW and Weblink ACT, a number of former NWII users have opted to move to Weblink ACT rather than NNW, reflecting a desire to use these Web-based products exclusively for trade reporting, rather than active trading. Accordingly, in SR–NASD–2006–094, Nasdaq increased the

[6] Nasdaq expects that, consistent with current practice, most NASD members seeking access to the TRF would use a proprietary front-end system developed by the broker-dealer or a product offered by a service bureau. Weblink ACT is designed as a basic front-end system for low volume users.

comparatively low fees for Weblink ACT to ensure that, as between NNW and Weblink ACT, fees are allocated appropriately to allow recovery of Nasdaq's costs. Specifically, the current $150 fee for Weblink ACT users that report a daily average of 20 or fewer trades during a month is being raised to $200, while the $300 fee for higher volume users is being increased to $375. Nasdaq is filing this proposed rule change to apply the foregoing changes to non-NASD members subscribing to these products.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed rule change applies to non-members a fee change that is being implemented for NASD members. Accordingly, the proposed rule change promotes an equitable allocation of fees between members and non-members using these services.

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, as amended.

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. 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–NASD–2006–095 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number NASD–2006–095. 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. Copies of the filing also will be available for inspection and copying at the principal offices of NASD. 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–NASD–2006–095 and should be submitted on or before October 23, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.[9] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[10] which requires that the rules of a self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that became effective on August 1, 2006, pursuant to SR–NASD–2006–094.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice thereof in the **Federal Register**. The proposed fees for non-NASD members are identical to those in SR–NASD–2006–094, which implemented those fees for NASD members and which became effective as of August 1, 2006. The Commission notes that the instant proposed rule change will promote consistency in NASD's fee schedule by applying simultaneously the same pricing schedule for NASD members and non-NASD members alike. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (SR–NASD–2006–095), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16166 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54499; File No. SR–NASD–2006–094]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Regarding Fees for the New Nasdaq Workstation and Weblink ACT

September 25, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed

[7] 15 U.S.C. 78*o*–3

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq amended the proposed rule change on September 20, 2006.[3] Pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] Nasdaq has designated this proposal as establishing or changing a member due, fee or other charge, 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 modify fees for the New Nasdaq Workstation (''NNW'') and Weblink ACT. Nasdaq will implement the proposed rule change on August 1, 2006. The text of the proposed rule change is available at the Commission's Public Reference Room, at NASD, and at *http://www.nasd.com*.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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 is amending Rule 7010 to change fees associated with its Web-based NNW and Weblink ACT products. Since the NNW's inception as a replacement for the Nasdaq Workstation II (''NWII'') last year, the fee for the NNW has been $435 per user per month, plus $90 per month for data feeds included with the NNW, for a total cost of $525 per user per month. Nasdaq is now reducing the fee to $475 per user per month, including the cost of the data feeds provided with the NNW. The change is designed to enhance the competitiveness of the NNW in contrast to front-end applications provided by broker-dealers and service bureaus, and, as discussed below, also reflects decreasing demand for the product.

Weblink ACT, also referred to as Nasdaq Workstation Post Trade, is a Web-based application used for submission of trade reports. As such, as the Nasdaq Exchange begins to operate as a national securities exchange, Weblink ACT provides basic front-end access to the Trade Reporting Facility (''TRF'') operated by Nasdaq and NASD,[7] as well as access to ACT functionality still offered by Nasdaq under authority delegated by NASD.

Since the introduction of NNW and Weblink ACT, a number of former NWII users have opted to move to Weblink ACT rather than NNW, reflecting a desire to use these Web-based products exclusively for trade reporting, rather than active trading. Accordingly, Nasdaq is proposing to increase the comparatively low fees for Weblink ACT to ensure that, as between NNW and Weblink ACT, fees are allocated appropriately to allow recovery of Nasdaq's costs. Specifically, the current $150 fee for Weblink ACT users that report a daily average of 20 or fewer trades during a month is being raised to $200, while the $300 fee for higher volume users is being increased to $375.

Nasdaq is also amending Rule 7010(g), which has historically contained the fees for the trade reporting services of Nasdaq, to reflect the Nasdaq Exchange's commencing operations for trading of securities listed on the Nasdaq Exchange, the TRF's commencing operations for reporting of Nasdaq-listed securities, and Nasdaq's continued operation, for a transitional period, as the quotation and trade reporting facility of NASD for non-Nasdaq securities. Nasdaq is amending Rule 7010(g) to remove fees and credits associated with reporting of Nasdaq-listed stocks, which are now contained in the NASD Rule 7000B Series, as well as fees for risk management services now provided by the Nasdaq Exchange. During the transitional period before the Nasdaq Exchange begins to trade non-Nasdaq stocks, Rule 7010(g) continues to govern fees and credits for reporting of non-Nasdaq listed securities to the ACT system operated by Nasdaq. Accordingly, Nasdaq is amending the rule to eliminate fees for services that are no longer offered by Nasdaq, as well as removing references to the Nasdaq Market Center, a term that is no longer used to describe trade reporting services.

Several other portions of the NASD Rule 7000 Series reference fees for services that, following the Nasdaq Exchange's operational date, will no longer be offered by NASD or Nasdaq. These provisions become inactive after August 1, 2005. NASD will file a cleanup proposed rule change to remove fees no longer charged by NASD at a later date.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Sections 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. The proposed rule change reflects demand patterns for NNW and Weblink ACT and is designed to ensure that as between the products, fees are allocated appropriately to allow recovery of costs.

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, as amended.

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.

[3] *See* Amendment No. 1. The effective date of the original proposed rule change is August 1, 2006 and the effective date of the amendment is September 20, 2006. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on September 20, 2006, the date Nasdaq filed Amendment No. 1. *See* Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] Changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com*. Nasdaq is filing this proposed rule change because the NNW and Weblink ACT are used with respect to the quotation, execution, and trade reporting system operated by Nasdaq with respect to non-Nasdaq securities. The NASDAQ Stock Market LLC (''Nasdaq Exchange'') is also filing a comparable modification to Nasdaq Exchange Rule 7015.

[7] Nasdaq expects that, consistent with current practice, most NASD members seeking access to the TRF would use a proprietary front-end system developed by the broker-dealer or a product offered by a service bureau. Weblink ACT is designed as a basic front-end system for low volume users.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it establishes or changes a member due, fee, or other charge imposed by NASD. 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.[12]

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–NASD–2006–094 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–094. 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. Copies of such filing also will be available for inspection and copying at the principal office of NASD. 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–NASD–2006–094 and should be submitted on or before October 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16168 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] *See* footnote 3, *supra*.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54491; File No. SR–NYSE–2005–09]

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Rule 409 Regarding Statements of Accounts to Customers and Proposed New Rule 409A Regarding SIPC Disclosure

September 22, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2005, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 13, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On September 19, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Rule 409(e) to require that each statement of account sent to a customer include a legend advising the customer to promptly report any inaccuracy or discrepancy in that person's account to his or her brokerage firm. If the account is subject to a clearing agreement pursuant to NYSE Rule 382, amended NYSE Rule 409(e) would require the legend to advise that the customer's notification be sent to both the introducing firm and the clearing firm. The legend also would need to advise the customer that he or she should re-confirm any oral communications with either the clearing or introducing firm in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (SIPA). The Exchange is also proposing to adopt a new rule, NYSE Rule 409A, which would require member organizations to advise each customer in writing, upon the opening of an account and at least annually thereafter, that he or she may obtain information from the Securities Investor Protection Corporation (SIPC). Proposed Rule 409A would require the written advisories to include SIPC's Web site address and telephone number, and, if the account is subject to a clearing agreement pursuant to NYSE Rule 382, the rule would permit its requirements to be delegated to either the introducing firm or the clearing firm.

The text of the proposed rule change is set forth below. Additions are *italicized.* Deletions are [bracketed].

Rule 409

Statements of Accounts to Customers

(a) through (d)—No change.

(e) Each statement of account sent to a customer pursuant to this rule shall *include the following:*

(1) [bear a] *A* legend [as follows] *that reads:* ''A financial statement of this organization is available for your personal inspection at its offices, or a copy of it will be mailed upon your written request.''

(2) A legend that advises customers to report promptly any inaccuracy or discrepancy in that person's account to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NYSE withdrew its proposal to amend NYSE Rule 409(a), which would have permitted institutional customers conducting a Delivery versus Payment and Receive versus Payment (''DVP/RVP'') business to opt out of receiving customer account statements. NYSE refiled this proposal in File No. SR–NYSE–2005–90.

[4] In Amendment No. 2, NYSE proposed additional changes to NYSE Rule 409(a) and proposed new NYSE Rule 409A, which are discussed below.

his or her brokerage firm. If a customer's account is subject to a clearing agreement pursuant to Rule 382, the legend must advise that such notification be sent to both the introducing firm and the clearing firm. The legend must also advise the customer that any oral communications with either the introducing firm or the clearing firm should be re-confirmed in writing in order to further protect the customer's rights, including its rights under the Securities Investor Protection Act (SIPA).

(f) through (g)—No change.

Supplementary Material—No change.

Rule 409A

SIPC Disclosures

Member organizations must advise each customer in writing, upon the opening of an account and at least annually thereafter, that they may obtain information about the Securities Investor Protection Corporation (SIPC), including the SIPC Brochure, by contacting SIPC, and shall provide the Web site address and telephone number of SIPC. If a clearing agreement pursuant to Rule 382 exists, the requirements of this rule may be delegated to either the introducing firm or the clearing firm.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In filing the proposed rule change, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended. 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Amendments to Rule 409(e)

In response to recommendations by the U.S. General Accounting Office (the ''GAO''), the Exchange proposes amendments to Rule 409(e) that would require customer account statements to bear a legend that advises customers to promptly notify their brokerage firm of any inaccuracy or discrepancy in the account statement.[5] The legend must also advise the customer that any oral communications with either the introducing firm or the clearing firm should be re-confirmed in writing in order to further protect the customer's rights, including its rights under the Securities Investor Protection Act (SIPA). This requirement is included to create a written record for the purpose of protecting customer interests.[6] In addition to heightening customer awareness regarding information reflected on their statements, the advisory will encourage customers to submit a written record of any possible unauthorized trading activity, unrecorded dividend payments, and unaccounted cash positions. The GAO deems this to be important because, in the event a firm goes into a liquidation administered by SIPC, SIPC and the trustee generally will assume that the firm's records are accurate unless the customer is able to prove otherwise. The Commission has approved a substantially similar rule change proposed by NASD.[7]

Proposed New Rule 409A

Also, in response to the GAO's recommendations, and to further promote investor awareness, the Exchange proposes new Rule 409A, which would require member organizations to advise customers in writing, upon the opening of an account and at least annually thereafter, that they may obtain information from SIPC, including the SIPC Brochure, by contacting SIPC via its Web site or by telephone. The proposed rule would also require the written advisories to include the SIPC Web site address and telephone number. If a clearing agreement pursuant to Rule 382 exists, the requirements of this rule could be delegated to either the introducing firm or the clearing firm.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) of the Exchange Act.[8] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Exchange believes the proposed rule change is designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market, and protect investors because it will help investors understand procedures for preserving their rights in the event of erroneous or unauthorized transactions in their accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange is proposing an effective date of 180 days after SEC approval of the proposed amendments to Rule 409(e) and proposed new Rule 409A. This will give member organizations time to make necessary changes to their customer documentation and systems.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[5] *See* GAO, *Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors*, GAO–01–653 (May 25, 2001). *See also* GAO–03–811 (July 11, 2003); GAO–04–848R Follow-Up on SIPC (July 9, 2004). GAO has since been renamed the Government Accountability Office.

[6] NYSE Information Memo No. 98–16, dated April 4, 1998, states that oral complaints are reportable under Rule 351(d) (Reporting Requirements). The Exchange expects that oral customer complaints will be investigated and treated in the same manner as written complaints.

[7] *See* Order Approving Proposed Rule Change Relating to Rule 2340 Concerning Customer Account Statements, Securities Exchange Act Release No. 54411 (Sept. 7, 2006).

[8] *See* 15 U.S.C. 78f(b)(5).

change, as amended, is consistent with the Exchange 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–NYSE–2005–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2005–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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 submission should refer to File Number SR–NYSE–2005–09 and should be submitted on or before October 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16112 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54490; File No. SR–NYSEArca–2006–61]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Existing Rules for Investment Company Units

September 22, 2006.

Pursuant to the provisions of 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 September 19, 2006, NYSE Arca, Inc. (the ''Exchange''), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), 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 Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through NYSE Arca Equities, proposes to amend Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3). The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

(b) Index Methodology and Calculation.

(1) The index underlying a series of Units will be calculated based on [either] the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting *or a* methodology *weighting components of the index based on any, some or all of the following: sales, cash flow, book value and dividends;*

* * * * *

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted listing standards applicable to Investment Company Units (''Investment Company Units'' or ''ICUs'') that are consistent with the listing criteria currently used by other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs or trade such ICUs on the Exchange on an unlisted trading privileges (''UTP'') basis.[3] An Investment Company Unit is defined in NYSE Arca Equities Rule 5.1(b)(15) as a security representing an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company or a similar entity. A registered investment company is registered under the Investment Company Act of 1940.[4]

The ''generic'' listing criteria of Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) permits listing or trading pursuant to UTP of ICUs that satisfy such criteria in reliance upon Rule 19b–4(e) under the Act[5], without a filing pursuant to Rule 19b–4 under the Act.[6] Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3) requires that if a series of ICUs approved for trading (including pursuant to UTP) on the Exchange in reliance upon Rule 19b–4(e) under the Act,[7] the index underlying the series of ICUs must be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In October 1999, the Commission approved NYSE Arca Equities Rule 5.2(j)(3), which sets forth the rules related to listing and trading criteria for Investment Company Units. Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999)(SR-PCX–1998–29). In July 2001, the Commission also approved the Exchange's listing standards pursuant to Rule 19b–4(e) for listing and trading, or the trading pursuant to UTP, of Investment Company Units under NYSE Arca Equities Rule 5.2(j)(3). Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716–01 (July 19, 2001)(SR–PCX–2001–14).

[4] 15 U.S.C. 80a.

[5] 17 CFR 240.19b–4(e).

[6] 17 CFR 240.19b–4.

[7] 17 CFR 240.19b–4(e).

modified equal-dollar weighting methodology.

According to the Exchange, the proposed rule change will specify one additional methodology. The Exchange proposes to amend Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3) to permit a series of ICUs to be listed or traded pursuant to UTP under the generic standards pursuant to Rule 19b–4(e) under the Act [8] if the underlying index for such series is weighted based on any, some or all of the following: sales, cash flow, book value, and dividends (''fundamentals weighted indexes'').[9] The Exchange states that the proposed rule change is based on the proposed rule change of the NASDAQ Stock Market LLC (''Nasdaq'').[10]

''Sales'' refers to the total of reported operating revenues less various adjustments to gross sales, such as returns, discounts, allowances, excise taxes, insurance charges, sales taxes, and value added taxes. In calculating the sales value, an index provider may opt to average the company's applicable figures for several prior years (*e.g.*, five prior years as reflected in the company's Annual Report on Form 10–K).

''Cash Flow'' refers to operating income plus depreciation. For example, a manufacturer typically reports its operating income as its net sales plus other operating income minus the cost of goods sold and selling, general and administrative expenses. Depreciation expense for a manufacturer typically includes the depreciation that is directly related to or associated with tangible fixed assets and includes amortization of fixed assets that are part of plant, property and equipment, such as leased assets, leasehold improvements, and internal use software. For example, for a manufacturer depreciation, expense excludes amortization of intangible assets. For banks, financial companies and REITs, operating income refers to their total operating revenue minus total operating expenses. For REITs, depreciation expense includes depreciation relating to real estate property and includes: corporate fixed asset depreciation if not separated from property depreciation. In calculating cash flow, an index provider may opt to average the company's applicable figures for several prior years (*e.g.*, five prior years as reflected in the company's Annual Report on Form 10–K).

''Book Value'' refers to a company's book value at the index review date. In accordance with accounting principles, book value generally means total common equity, which is derived from adding share capital and additional paid-in capital to retained earnings. In calculating book value, an index provider may opt to average the company's applicable figures for several prior years (*e.g.*, five prior years as reflected in the company's Annual Report on Form 10–K).

''Dividends'' refers to total dividend distributions, including both special and regular dividends paid in cash. Generally, the total dividend amount that is declared to all classes of common shareholders includes regular cash, as well as special cash dividends, and excludes returns of capital and in-specie dividends. In calculating dividends, an index provider may opt to average the company's applicable figures for several prior years (*e.g.*, five prior years as reflected in the company's Annual Report on Form 10–K).

The Exchange believes that the fundamentals weighting methodology is a transparent methodology that is appropriately included in the ICU generic listing criteria as an alternative to traditional weighting techniques. According to the Exchange, fundamental indexing provides an investor with additional choices in selecting exchange-traded funds whose underlying index emphasizes financial factors that the investor may believe are important. The Exchange notes that products based on indexes using this methodology are already subject to the other requirements of the generic listing standards pursuant to Rule 19b-4(e).[11] The Exchange has requested accelerated approval in order to avoid delay in the listing and trading (including pursuant to UTP) of securities linked to fundamental weighted indexes.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [13] of the Act, in general, and furthers the objectives of Section 6(b)(5) [14] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposed rule change should facilitate the listing and trading (including pursuant to UTP) of Investment Company Units that rely on an index using a fundamental weighting methodology and should thereby reduce the burdens on issuers and other market participants.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. 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 No. SR–NYSEArca–2006–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–61. This

[8] *Id.*

[9] In each instance, the index methodology will set forth the means for calculating sales, cash flow, book value, and dividends.

[10] *See* Securities Exchange Act Release No. 54459 (September 15, 2006), 71 FR 55533 (September 22, 2006)(SR-NASDAQ–2006–035).

[11] 17 CFR 240.19b–4(e).

[12] Telephone conference on September 21, 2006 between Michael Cavalier, Assistant General Counsel, NYSE Group, Inc. and Mitra Mehr, Special Counsel, Division of Market Regulation, Commission (''September 21st Telephone Conference'').

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] September 21st Telephone Conference.

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. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–61 and should be submitted on or before October 23, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change amends NYSE's existing generic listing standards pursuant to Rule 19b–4(e)[18] for Investment Company Units to provide that an eligible index may be calculated following the ''fundamentals weighted'' or ''fundamental index'' methodology. This index calculation methodology weights components based on one or more of the following: Sales, cash flow, book value, and dividends.[19]

Including this index calculation methodology in NYSE's generic listing standards will provide investors with more investment choices by offering an alternative to the other index methodologies, such as capitalization-weighted ones. The Commission notes that the indexes that would be based on the fundamentals weighting methodology will already be subject to the requirements of the generic listing standards pursuant to Rule 19b–4(e) of the Act,[20] including trading volume and liquidity requirements. In addition, by amending its generic listing standards pursuant to Rule 19b–4(e) of the Act,[21] NYSE should reduce the time frame for listing and trading Investment Company Units that rely on an index utilizing a fundamentals weighting methodology. The proposed rule change should therefore facilitate the listing and trading (including on an unlisted trading privileges basis) of such securities and thereby reduce the burdens on issuers and other market participants.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing in the **Federal Register**. The Commission believes the proposed rule change should provide investors with an alternative to the current index calculation methodologies. The proposed rule change is substantially identical to that approved for another exchange.[22] The Commission does not believe that the proposed rule change raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[23] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NYSEArca–2006–61) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16111 Filed 9–29–06; 8:45 am]

BILLING CODE 8010–01–P

[16] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 17 CFR 240.19b–4(e).

[19] According to the NYSE, in each instance, the index methodology will set forth the means of calculating sales, cash flow, book value, and dividends and thus will be transparent.

[20] 17 CFR 240.19b–4(e).

[21] *Id.*

[22] *See* Securities Exchange Act Release No. 54459 (September 15, 2006), 71 FR 55533 (September 22, 2006) (SR–NASDAQ–2006–035).

[23] 15 U.S.C. 78s(b)(2).

[24] *Id.*

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54493; File No. SR–NYSEArca–2006–46]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, and Amendment No. 1 Thereto, Relating to Generic Listing and Maintenance Standards for Broad-Based Index Options

September 25, 2006.

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 July 25, 2006, the NYSE Arca, Inc. (''NYSE Arca'' 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 prepared principally by the NYSE Arca. On September 8, 2006, the Exchange filed Amendment No. 1.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 5.12 to adopt new ''generic'' listing standards for broad-based index options pursuant to Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which replaced the original filing in its entirety, the Exchange proposed to modify NYSE Arca Rule 5.15(a) to clarify that the position limit for broad-based index options is 25,000 contracts on the same side of the market, and made non-substantive changes to its proposed rule text. The Exchange also made clarifying changes in its description of the proposed rule change.

19b–4(e) under the Act.[4] The text of the proposed rule change is available on the NYSE Arca's Web site (*http://www.tradearca.com*), at the NYSE Arca's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE Arca 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 III below. The NYSE Arca has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 5.12 to establish listing and maintenance standards, pursuant to Rule 19b–4(e) under the Act,[5] for broad-based index options. The proposal will allow the Exchange to list and trade, pursuant to Rule 19b–4(e) under the Act,[6] broad-based index options that meet the listing standards in NYSE Arca Rule 5.12(a). The listing standards require, among other things, that the underlying index be broad-based, as defined in NYSE Arca Rule 5.10(b)(23); that options on the index be a.m.-settled; that the index be capitalization-weighted, price-weighted, equal dollar-weighted, or modified capitalization-weighted; and that the index be comprised of at least 50 securities, all of which must be ''NMS stocks,'' as defined in Rule 600 of Regulation NMS.[7] In addition, NYSE Arca Rule 5.12(a) requires (among other things) that a specified percentage of the index's component securities meet certain minimum market capitalization and average daily trading volume requirements; that no single component account for more than 10% of the weight of the index and that the five highest weighted components represent no more than 33% of the weight of the index; that the index value be widely disseminated at least every 15 seconds; that index components comprising at least 80% of the weight of the index must be ''options eligible'' pursuant to NYSE Arca Rule 5.3; and that the Exchange have written surveillance procedures in place with respect to the index options. NYSE Arca Rule 5.12(a) also provides that non-U.S. index components that are not subject to a comprehensive surveillance sharing agreement between the Exchange and the primary market(s) trading the index components may comprise no more than 20% of the weight of the index. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of broad-based index options and that it intends to apply its existing surveillance procedures for index options to monitor trading in broad-based index options listed pursuant to NYSE Arca Rule 5.12(a). Additionally, the Exchange must reasonably believe that it has adequate system capacity to support the trading of any index options listed pursuant to NYSE Arca Rule 5.12(a). The Exchange also proposes to adopt NYSE Arca Rule 5.12(b), which establishes maintenance standards for broad-based index options listed pursuant to NYSE Arca Rule 5.12(a).

NYSE Arca also proposes to apply NYSE Arca Rule 6.8, as modified by NYSE Arca Rule 5.15, which establishes a position limit of 25,000 contracts on the same side of the market,[8] to broad-based index options listed pursuant to NYSE Arca Rule 5.12(a).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–NYSEArca–2006–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–46. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying

[4] 17 CFR 240.19b–4(e).

[5] *Id.*

[6] *Id.*

[7] Rule 600 of Regulation NMS defines an ''NMS stock'' to mean ''any NMS security other than an option.'' An ''NMS security'' is ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' 17 CFR 242.600.

[8] In this proposed rule change, NYSE Arca is proposing to amend NYSE Arca Rule 5.15(a) to clarify that the position limit of 25,000 contracts is on the same side of the market in the same underlying index.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–46 and should be submitted on or before October 23, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

Currently, to list options on a particular broad-based index, the NYSE Arca must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. However, Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class.

As described more fully above, the NYSE Arca proposes to establish listing standards pursuant to Rule 19b–4(e) for broad-based index options. The Commission's approval of the NYSE Arca's listing standards for broad-based index options will allow options that satisfy the listing standards to begin trading pursuant to Rule 19b–4(e), without constituting a proposed rule change within the meaning of Section 19(b) of the Act and Rule 19b–4, for which notice and comment and Commission approval is necessary.[13] The NYSE Arca's ability to rely on Rule 19b–4(e) to list broad-based index options that meet the requirements of NYSE Arca Rule 5.12(a) potentially reduces the time frame for bringing these securities to the market, thereby promoting competition and making new broad-based index options available to investors more quickly.

The Commission notes that the NYSE Arca has represented that it has adequate trading rules, procedures, listing standards, and surveillance program for broad-based index options. NYSE Arca's existing index option trading rules and procedures will apply to broad-based index options listed pursuant to proposed NYSE Arca Rule 5.12(a). Additionally, existing NYSE Arca rules, including provisions addressing sales practices and margin requirements, also will apply to these options. In addition, as mentioned above, the NYSE Arca has established a position limit of 25,000 contracts on the same side of the market for broad-based index options listed pursuant to NYSE Arca Rule 5.12(a), by applying NYSE Arca Rule 6.8, as modified by NYSE Arca Rule 5.15, to such options.[14] NYSE Arca Rule 5.18(a) provides that the exercise limits for broad-based index options are equivalent to the position limits contained in NYSE Arca Rule 5.15. The Commission believes that the position and exercise limits should serve to minimize potential manipulation concerns.

The NYSE Arca represents that its surveillance procedures are adequate to properly monitor the trading of broad-based index options and that it intends to apply its existing surveillance procedures for index options to monitor trading in broad-based index options listed pursuant to NYSE Arca Rule 5.12(a). In addition, because proposed NYSE Arca Rule 5.12(a)(9) requires that each component of an index be an ''NMS stock,'' as defined in Rule 600 of Regulation NMS under the Act, each index component must trade on a registered national securities exchange or through The Nasdaq Stock Market, Inc. (''Nasdaq'').[15] Accordingly, the NYSE Arca will have access to information concerning trading activity in the component securities of an underlying index through the Intermarket Surveillance Group (''ISG'').[16] In addition, proposed NYSE Arca Rule 5.12(a)(10) provides that non-U.S. index components that are not subject to a comprehensive surveillance sharing agreement between the NYSE Arca and the primary market(s) trading the index components may comprise no more than 20% of the weight of the index.[17] The Commission believes that these requirements will help to ensure that the NYSE Arca has the ability to monitor trading in broad-based index options listed pursuant to NYSE Arca Rule 5.12(a) and in the component securities of the underlying indexes.

The Commission believes that the requirements in the proposed NYSE Arca Rules regarding, among other things, the minimum market capitalization, trading volume, and relative weightings of an underlying index's component stocks are designed to ensure that the markets for the index's component stocks are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. In addition, as mentioned above, proposed NYSE Arca Rule 5.12(a)(1) requires that the underlying index be ''broad-based,'' as defined in NYSE Arca Rule 5.10(b)(23).[18] The Commission believes that these requirements minimize the potential for manipulating the underlying index.

The Commission believes that the requirement in proposed NYSE Arca Rule 5.12(a)(11) that the current index value be widely disseminated at least once every 15 seconds by the Options Price Reporting Authority, the Consolidated Tape Association, the Nasdaq Index Dissemination Service or one or more major market data vendors[19] during the time an index

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the SRO begins trading the new derivative securities product. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98).

[14] *See supra* at note 3.

[15] Recently, the Commission approved the application of The NASDAQ Stock Market LLC, a subsidiary of Nasdaq, to become a registered national securities exchange. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006). At the time of the Commission's consideration of this matter, Nasdaq is still operating as a subsidiary of the National Association of Securities Dealers (''NASD''), a registered national securities association for certain securities.

[16] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. All of the registered national securities exchanges and NASD are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of the ISG.

[17] However, such non-U.S. index components, as ''NMS stocks,'' would be registered under Section 12 of the Act and listed on a national securities exchange where there is last sale reporting.

[18] NYSE Arca Rule 5.10(b)(23) defines ''broad-based index'' to mean ''an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.''

[19] The NYSE Arca stated that '' '[m]ajor market data vendors' for the purposes of NYSE Arca Rule

option trades on the NYSE Arca should provide transparency with respect to current index values and contribute to the transparency of the market for broad-based index options. In addition, the Commission believes, as it has noted in other contexts, that the requirement in proposed NYSE Arca Rule 5.12(a)(2) that an index option be settled based on the opening prices of the index's component securities, rather than on closing prices, could help to reduce the potential impact of expiring index options on the market for the index's component securities.[20]

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing in the **Federal Register**. The Exchange has requested accelerated approval of the proposed rule change. The proposal implements listing and maintenance standards and position and exercise limits for broad-based index options substantially identical to those recently approved for the Philadelphia Stock Exchange, Inc., the International Securities Exchange, Inc., the American Stock Exchange LLC, and the CBOE.[21] The Commission does not believe that the Exchange's proposal raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[22] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NYSEArca–2006–46), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Nancy M. Morris,

Secretary.

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BILLING CODE 8010–01–P

5.12(a)(11) includes, but is not limited to, securities information vendors such as Bloomberg and Reuters.''

[20] *See, e.g.,* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving a Chicago Board Options Exchange, Incorporated (''CBOE'') proposal to establish opening price settlement for S&P 500 Index options).

[21] *See* Securities Exchange Act Release No. 54158 (July 17, 2006), 71 FR 41853 (July 24, 2006) (SR–Phlx–2006–17); Securities Exchange Act Release No. 52578 (October 7, 2005), 70 FR 60590 (October 18, 2005) (SR–ISE–2005–27); Securities Exchange Act Release No. 52781 (November 16, 2005), 70 FR 70898 (November 23, 2005) (SR–Amex–2005–069); Securities Exchange Act Release No. 53266 (February 9, 2006), 71 FR 8321 (February 16, 2006) (SR–CBOE–2005–59).

[22] 15 U.S.C. 78s(b)(2).

[23] *Id.*

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10622 and #10623]

North Carolina Disaster #NC–00005

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of North Carolina dated 9/25/2006.

Incident: Tropical Storm Ernesto.

Incident Period: 8/31/2006.

Effective Date: 9/25/2006.

Physical Loan Application Deadline Date: 11/24/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 6/25/2007.

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 Administrator's disaster declaration, applications for disaster loans may be filed 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: Duplin, Jones.

Contiguous Counties: North Carolina: Carteret, Craven, Lenoir, Onslow, Pender, Sampson, Wayne.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	7.934
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.000
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10622 B and for economic injury is 10623 0.

The State which received an EIDL Declaration # is North Carolina.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Steven C. Preston,

Administrator.

[FR Doc. E6–16134 Filed 9–29–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration, National Small Business Development Center Advisory Board will be hosting a public meeting via conference call on Tuesday, October 17, 2006 at 1 p.m. (EST). The purpose of the meeting is to discuss the recent board meeting at the Houston ASBDC Conference on September 14, 2006, and the ''Dialogue with the SBDC State Directors'' meeting on September 15, 2006.

Anyone wishing to place an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

Thomas M. Dryer,

Acting Committee Management Officer.

[FR Doc. E6–16135 Filed 9–29–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Privacy Act of 1974; System of Records Notice

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of new system of records.

SUMMARY: The Small Business Administration is adding a new system of records to the Agency's Privacy Act Systems of Records. The system is called the SBA Identity Management System (IDMS). The purpose of this System is to automate records that maintain information required to comply with Homeland Security Presidential Directive 12 (HSPD–12).

The IDMS provides the workflow process used to enforce roles in personalizing and issuing Personal Identify Verification (PIV) cards. IDMS automates the current paper based process and is used to maintain the integrity of PIV card issuance.

DATES: Written comments on the System of records must be received November 1, 2006.

ADDRESSES: Written comments on the System of Records should be directed to Christine H. Liu, Agency Privacy Officer, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or *Christine.Liu@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Christine Liu, Agency Privacy Officer, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205–6708.

SBA 34

SYSTEM NAME:

IDENTITY MANAGEMENT SYSTEM—SBA 34.

SYSTEM LOCATION:

The servers and secure data storage are located at Maden Technologies; 2110 Washington Boulevard, Suite 200; Arlington, VA 22204. Enrollment and queries can be performed by authorized individuals from any authorized, suitably-equipped SBA workstation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDE:

Individuals, who require regular, ongoing access to SBA facilities, information technology systems, or information classified in the interest of national security, including:

a. Applicants for employment or contracts.

b. Federal employees.

c. Contractors.

d. Students.

e. Interns.

f. Volunteers, and

The system also includes individuals authorized to perform or use services provided in SBA facilities (e.g., Credit Union, Fitness Center, etc.)

The system does not apply to occasional visitors or short-term guests to whom SBA will issue temporary identification and credentials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, social security number; date of birth; signature; image (photograph); fingerprint images and minutia templates; hair color; eye color; height; weight; organization/office of assignment; company name; telephone number; copy of background investigation form; personal addresses for past 5 years; high school and college attended (as applicable); Card Holder Unique Identification Number; Personal Identity Verification (PIV) enrollment package; PIV card issue and expiration dates; results of background investigation; PIV request form; PIV registrar approval signature; PIV card serial number; emergency responder designation; copies of documents used to verify identification or information derived from those documents; level of national security clearance and expiration date; computer system user name; user access and permission rights, public key certificates; digital signature information; National Agency Check with Written Inquiries investigation; FBI fingerprint check results; FBI National Criminal History Name Check results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 5 U.S.C. 301; Federal Information Security Act (Pub. L. 104–106, sec. 5113)

b. Electronic Government Act (Pub. L. 104–347, sec. 203)

c. Paperwork Reduction Act of 1995 (44 U.S.C. 3501)

d. Government Paperwork Elimination Act (Pub. L. 105–277, 44 U.S.C. 3504)

e. Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004

f. Federal Property and Administrative Act of 1949, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES, THESE RECORDS MAY BE USED, DISCLOSED OR REFERRED:

a. To a Congressional Office from an individual's record, when the office is inquiring on the individual's behalf with waiver; the Member's access rights are no greater than the individual's.

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

c. To SBA contractors, grantees, or volunteers who have been engaged to assist the SBA in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

d. To a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit with appropriate restrictions on further disclosure.

e. To the Office of Management and Budget (OMB) when necessary to the review of private relief legislation pursuant to OMB Circular No. A–19.

f. To a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended, the CIA Act of 1949 as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders or directives.

g. To notify another Federal agency when, or verify whether, a PIV card is no longer valid.

h. To a supervisor or manager in order to verify employee time and attendance record for personnel actions.

Note: Disclosures within SBA of data pertaining to date and time of entry and exit of an agency employee working in the District of Columbia may not be made to supervisors, managers or any other persons (other than the individual to whom the information applies) to verify employee time and attendance record for personnel actions because 5 U.S.C. 6106 prohibits Federal Executive agencies (other than the Bureau of Engraving and Printing) from using a recording clock within the District of Columbia, unless used as a part of a flexible schedule program under 5 U.S.C. 6120 *et seq.*

i. To the Department of Justice (DOJ) when any of the following is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines the disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that

litigation is likely to affect the agency or any of its components.

j. In a proceeding before a court, or adjudicative body, or a dispute resolution body before which the agency is authorized to appear or before which any of the following is a party to litigation or has an interest in litigation, provided, however, that the agency determines that the use of such records is relevant and necessary to the litigation, and that, in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected:

(1) The agency, or any component thereof;

(2) Any employee of the agency in his or her official capacity;

(3) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee; or

(4) The United States Government, where the agency determines that litigation is likely to affect the agency or any of its components.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in electronic media and in paper files and not on the card.

RETRIEVABILITY:

Records are retrievable by name, social security number, PIV card serial number, or Card Holder Unique Identification Number.

SAFEGUARDS:

Paper records are kept in locked cabinets in secure facilities and access to them is restricted to individuals whose role requires use of the records. Access to facilities will be controlled by the PIV card. The System requires a PIV card to log on and to digitally sign transactions. The computer servers in which records are stored are located in facilities that are secured by alarm systems and off-master key access. The computer servers themselves are password-protected. Access to individuals working at guard stations is password-protected; each person granted access to the system at guard stations must be individually authorized to use the system. A Privacy Act Warning Notice appears on the monitor screen when records containing information on individuals are first displayed. Data exchanged between the servers and the client PCs at the guard stations and badging office are encrypted. Backup tapes are stored in a locked and controlled room in a secure, off-site location.

An audit trail is maintained and reviewed periodically to identify unauthorized access. Persons given roles in the PIV process must complete training specific to their roles to ensure they are knowledgeable about how to protect individually identifiable information. The system uses the high risk confidentiality and integrity security controls specified in the National Institute of Standards and Technology Special Publication 800–53.

RETENTION AND DISPOSAL:

Records relating to persons covered by this system are retained in accordance with General Records Schedule 18, Item 17. Unless retained for specific, ongoing security investigations, for maximum security facilities, records of access are maintained for five years and then destroyed by wiping hard drives and shredding paper. For other facilities, records are maintained for two years and then destroyed by wiping hard drives and shredding paper. All other records relating to employees are destroyed two years after ID security card expiration date.

In accordance with FIPS 201–1, PIV Cards are deactivated within 18 hours of cardholder separation, notification of loss of card, or expiration. The information on PIV Cards is maintained in accordance with General Records Schedule 11, Item 4. PIV Cards that are turned in for destruction are shredded within 90 days.

SYSTEM MANAGER(S) AND ADDRESSES:

Assistant Administrator/Human Capital Management, United States Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. Associate Administrator for Disaster Assistance, United States Small Business Administration, 409 3rd Street, SW., Washington, DC 20416. This responsibility may be delegated.

NOTIFICATION PROCEDURES:

An individual may submit a record inquiry either in person or in writing to the System Manager or the Senior Agency Official for Privacy. When requesting notification of or access to records covered by this Notice, an individual should provide his/her full name, date of birth, and work location. An individual requesting notification of records in person must provide identity documents sufficient to satisfy the custodian of the records that the requester is entitled to access, such as a government-issued photo ID. Individuals requesting notification via mail or telephone must furnish, at minimum, name, date of birth, social security number, and home address in order to establish identity.

ACCESS PROCEDURES:

The Systems Manager or Senior Agency Official for Privacy will determine the process. Requesters should reasonably specify the record contents being sought.

CONTESTING PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction along with supporting justification showing why the record is not accurate, timely, relevant, or complete.

SOURCE CATEGORIES:

Employee, contractor, or applicant; sponsoring SBA; former sponsoring SBA; other Federal agencies; contract employer; former employer.

Dated: September 22, 2006.

Christine Liu,

Departmental Privacy Officer.

[FR Doc. E6–15848 Filed 9–29–06; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk

Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974.

(SSA), Social Security Administration, DCFAM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Certification of Period of Temporary Institutionalization and Need to Maintain Home—20 CFR 416.212(b)(1)—0960–0516. SSA is required by law to collect the information necessary to establish eligibility for continued Supplemental Security Income (SSI) benefits for temporarily institutionalized individuals. Sections 1611(e)(1)(G)&(H) of the Social Security Act require the Commissioner to establish procedures for determining that a physician has certified that the period of confinement is not likely to exceed 3 months, and for determining that the recipient needs to continue to maintain and provide for the expense of a home or living arrangement.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 5,000 hours.

2. Representative Payee Report—20 CFR 404.2035, 404.2065, 416.635, and 416.665—0960–0068. SSA uses forms SSA–623 and SSA–6230 to determine if (1) payments sent to individual representative payees have been used for Social Security beneficiaries' current maintenance and personal needs and (2) the representative payee continues to be a capable representative concerned with the beneficiary's welfare. The respondents are individual representative payees for recipients of Social Security benefits.

Type of Request: Revision to an OMB-approved information collection

Number of Respondents: 5,500,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 1,375,000 hours.

3. Representative Payee Report—20 CFR 404.265 and 416.665—0960–0691. Form SSA–6234 is used to collect information from organizational representative payees, such as institutions, to determine if (1) payments sent to these representative payees have been used for Social Security beneficiaries' current maintenance and personal needs; (2) the representative payees continue to be capable representatives concerned with beneficiaries' welfare; and (3) the representative payee organization is charging the beneficiary a fee, and if so, the amount of the fee. The respondents are organizational representative payees.

Type of Request: Revision of an OMB-approved collection.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 187,500.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Annual Earnings Test Direct Mail Follow-Up Program Notices—20 CFR 404.452–404.455—0960–0369. The Mid-Year Mailer (MYM) is used to ensure that Retirement Survivors Insurance (RSI) payments are correct. Beneficiaries under full retirement age (FRA) use Forms SSA–L9778, L9779, and L9781 to update their current year estimate and their estimate for the following year. MYM Forms SSA–L9784 and L9785 are designed to request earnings estimates in the year of FRA for the period prior to the month of FRA. Only one individually tailored Form is sent per respondent. Respondents are RSI beneficiaries with earnings over the exempt amount.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 225,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 37,500 hours.

2. Internet Request for Replacement of Forms SSA–1099/SSA–1042S—20 CFR 401.45—0960–0583. The information collected will be used by SSA to verify identity and to provide replacement copies of Forms SSA–1099/SSA–1042S needed to prepare Federal tax returns. This internet option to request a replacement SSA–1099/SSA–1042S will eliminate the need for a phone call to the national 800 number or a visit to a local field office. The respondents are beneficiaries who are requesting a replacement SSA–1099/SSA–1042S.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 21,000.

Frequency of Response: 1.

Average Burden Per Response: 1.5 minutes.

Estimated Annual Burden: 525 hours.

3. SSA Survey of Online Services Internet Panel—0960–NEW. SSA plans to conduct an online panel survey with pre-retirement individuals. The survey will ask a number of questions about participants' experiences with SSA's Internet-based services. The results of the survey will be used to assess awareness of SSA Internet-based services and to identify ways to increase awareness of these services in the pre-retirement population. The respondents are individuals ages 50–67 who are employed and who have agreed to be contacted via e-maill for online surveys.

Type of Request: New information collection.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 250 hours.

4. Medicare Part B Income-Related Premium—Life-Changing Event Form—0960–NEW. As per the Medicare Modernization Act of 2003, beginning in January 2007 selected beneficiaries of Medicare Part B insurance will have to pay a new income-related monthly adjustment amount (IRMAA). The amount of the IRMAA is based on income tax return data obtained from the Internal Revenue Service. If affected Medicare Part B beneficiaries believe that more recent tax data should be used because a life-changing event has occurred that significantly reduces their income, they can report these changes to SSA and ask for a new initial determination of their IRMAA. SSA believes that most respondents will go to a field office and do this in person; however, some respondents may choose to contact SSA by mail and they can use form SSA–44, the Medicare Part B Income-Related Premium—Life-Changing Event form. The respondents are Medicare Part B beneficiaries who want SSA to use more recent income data in determining the amount of their IRMAA.

Type of Request: New information collection.

Method of information collection	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Personal Interview	68,490	1	60	68,490
Form	7,610	1	90	11,415
Total	76,100			79,905

Total Burden Hours: 79,905 hours.

Dated: September 26, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6–16171 Filed 9–29–06; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Registration Requirements for Representatives to Receive Direct Payment of Fees Approved for Services Provided Before the Social Security Administration or a Federal Court and Forms 1099–MISC

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: We are issuing this notice to advise attorneys and non-attorneys who represent claimants before SSA, and attorneys who represent Social Security or Supplemental Security Income claimants before the Federal courts, that the requirements a representative must meet for SSA to pay the approved fee, or a part of the approved fee, directly to the representative from a claimant's past-due benefits will change effective January 1, 2007. Currently, SSA pays all or part of the fee we approve to the claimant's representative from his or her past-due benefits if the representative is an attorney or a non-attorney participant in SSA's direct fee payment demonstration project. SSA also pays all or part of the fee a Federal court approves directly to an attorney from a claimant's past-due benefits. SSA must expand the information a representative is required to submit to SSA in order for SSA to pay a fee directly because sections 6041(a) and 6045(f) of the Internal Revenue Code (IRC), as implemented by 26 CFR 1.6041–1, require SSA to issue a Form 1099–MISC to each representative who receives, by direct payment from SSA, aggregate fees of $600 or more in a calendar year. To meet this requirement, a person whom a claimant appoints to represent him or her before SSA after December 31, 2006, who is otherwise eligible for direct fee payment, and an attorney for whom a Federal court approves a fee on or after January 1, 2007, must provide SSA with his or her Social Security Number (SSN) as a prerequisite for SSA to pay a fee directly to the representative.

FOR FURTHER INFORMATION CONTACT: Everett Jackson, Social Security Administration, Office of Budget, Finance and Management, 2–K–5 East Low Rise, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0014, e-mail *Everett.Jackson@ssa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to sections 206 and 1631(d)(2) of the Social Security Act (Act), SSA:

- Determines the maximum fee an attorney or non-attorney representative may charge and collect for services the representative provided before SSA in a claim under title II or title XVI of the Act; and
- Pays the fee, or part of the fee, that was approved by the Commissioner of Social Security (Commissioner) or by a Federal court, under title II or title XVI, directly to an attorney out of a portion of the claimant's past-due benefits.

42 U.S.C. 406 and 42 U.S.C. 1383(d)(2). Additionally, section 303 of the Social Security Protection Act of 2004 (SSPA), Public Law 108–203, directs the Commissioner to carry out a 5-year nationwide demonstration project that extends the fee withholding and direct payment procedures that apply to attorneys under titles II and XVI of the Act to non-attorney representatives who meet certain prerequisites. This demonstration project commenced on February 28, 2005. Therefore, SSA is now paying directly to attorneys and non-attorney participants in the direct payment demonstration project fees we approve for administrative services, and to attorneys fees Federal courts approve for services before the courts.

The Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, mandates that each federal agency require persons ''doing business with that agency'' to provide the agency with his or her taxpayer identification number (TIN). 31 U.S.C. 7701. Under the DCIA, a person is considered to be doing business with an agency if the person is assessed a fee by the agency. Because SSA is required by sections 206(d) and 1631(d)(2)(C) of the Act to assess a fee on attorneys and eligible non-attorneys each time that SSA directly pays representational fees to them, SSA is doing business with representatives whom we directly pay. The DCIA also requires that, when a federal agency disburses money, it must include the TIN on each certified voucher submitted to a disbursing official. For individuals, the TIN is generally the SSN. 26 U.S.C. 6109. This means that, when SSA certifies for direct payment or directly pays a fee to a representative, SSA must include the representative's SSN on the payment voucher it submits to the Department of the Treasury. Accordingly, to comply with the DCIA's requirement that we obtain an SSN from each representative to whom we directly pay a fee and provide that SSN on each payment voucher to the Department of the Treasury, when a claimant has appointed a representative on January 1, 2007 or later, or when a Federal court has approved a fee on January 1, 2007 or later, SSA requires that the representative provide his or her SSN to SSA before SSA implements a favorable administrative determination or decision or before SSA acts on a Federal court's fee approval, as a condition for SSA to directly pay a fee or a portion of the fee to the representative from a claimant's past-due benefits.

Pursuant to sections 6041(a) and 6045(f) of the IRC, as implemented by 26 CFR 1.6041–1, SSA is required to issue a Form 1099–MISC to each representative who receives, by direct payment from SSA, aggregate fees of $600 or more in a calendar year. Per section 6109 of the IRC, each representative must provide SSA with his or her TIN. Generally, the Internal Revenue Service (IRS) Form W–9 is used to obtain the TIN. However, as allowed by the IRS, SSA is developing a substitute form, Form SSA–1699, Request for Appointed Representative's

Direct Payment Information, to obtain the representative's SSN and other information we need to issue Forms 1099–MISC. We published a **Federal Register** notice of our intent to establish both the SSA–1699 and the SSA–1695, which is discussed below. See 71 FR 38681–38683, July 7, 2006.

The one-time submission of the SSA–1699 is the first step in a two-step registration process that a representative must complete in order to receive direct fee payment in a specific claim. We are providing an electronic means by which representatives may complete and submit the SSA–1699 via our Internet Web site. The second step requires that a representative provide SSA with his or her SSN in each instance of representation (*i.e.,* each time the representative is appointed to represent a claimant before SSA or, if an attorney did not register when the claim was pending before the Commissioner, each time a Federal court approves a fee) by submitting the Form SSA–1695, Identifying Information for Possible Direct Payment of Authorized Fees. The first step in the registration process, the one-time submission of the SSA–1699, begins with publication of this notice. The second step, submission of the SSA–1695, will begin in November of 2006. We will provide further information about the required forms, and the application developed to enable completion and submission of the SSA–1699 electronically via the Internet, on the Representing Claimants Web site on Social Security Online (*http://www.socialsecurity.gov/representation*).

If a representative does not provide SSA with his or her SSN by completing both steps in the registration process as described above, SSA will not make direct fee payment to the representative, even if the representative is an attorney or a participant in the non-attorney direct payment demonstration project.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

Dated: September 15, 2006.

Dale W. Sopper,

Deputy Commissioner, for Budget, Finance and Management.

[FR Doc. E6–16096 Filed 9–29–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5552]

Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (the Act) there will be a meeting of the Cultural Property Advisory Committee on Wednesday, October 11, 2006, from approximately 9 a.m. to 5 p.m., and on Thursday, October 12, from approximately 9 a.m. to 1 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. At this meeting, the Committee will conduct its ongoing review function with respect to the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Guatemala Concerning the Imposition of Import Restrictions on Archaeological Objects and Materials from the Pre-Columbian Cultures of Guatemala; and, with respect to the Memorandum of Understanding with the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from the Region of the Niger River Valley and the Bandiagara Escarpment (Cliff). This meeting is for the Committee to satisfy its ongoing review responsibility of agreements pursuant to the Act. It will focus its attention on Article II of the MOUs. This is not a meeting to consider extension of the MOUs. Such a meeting or meetings will be scheduled in the future and at that time a public session will be held.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The U.S.—Guatemala MOU, the U.S.— Mali MOU, the designated lists of restricted categories, the text of the Act, and related information may be found at *http://exchanges.state.gov/culprop.*

The meeting on October 11–12, will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: September 21, 2006.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–16196 Filed 9–29–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In August 2006, there were six applications approved. This notice also includes information on four applications, one approved in September 2005, one approved in January 2006, and two approved in July 2006, inadvertently left off the September 2005, January 2006, and July 2006 notices, respectively. Additionally, 20 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Jefferson, Beaumont, Texas.

Application Number: 05–05–C–00–BPT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $290,471.

Earliest Charge Effective Date: April 1, 2007.

Estimated Charge Expiration Date: November 1, 2008.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Airport drainage environmental study.

Airfield lighting.

Terminal renovations.

Perimeter security upgrades.

PFC application and administration fees.

Decision Date: September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Texas Airports Development Office, (817) 222–5614.

Public Agency: Coos County Airport District, North Bend, Oregon.

Application Number: 06–07–C–00–OTH.

Application Type: Impose and use a PFC.

Total PFC Revenue Approved in this Decision: $320,000.

PFC Level: $4.50

Earliest Charge Effective Date: March 1, 2008.

Estimated Charge Expiration Date: July 1, 2010.

Class of Air Carriers not Required to Collect PFC's:

Non-scheduled air tax/commercial operators, utilizing aircraft having a seating capacity of less than 20 passengers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at North Bend Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Design new terminal building facilities.

PFC administration.

Decision Date: January 25, 2006.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: City of Fort Smith, Arkansas.

Application Number: 06–03–C–00–FSM.

Application Type: Impose and use a PFC.

PFC Level: $3.00

Total PFC Revenue Approved in this Decision: $809,249.

Earliest Charge Effective Date: January 1, 2010.

Estimated Charge Expiration Date: August 1, 2013.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Perimeter road construction.

Terminal apron.

Terminal security equipment.

Conditioned air at gates.

Decision Date: July 5, 2006.

FOR FURTHER INFORMATION CONTACT: Don Harris, Arkansas/Oklahoma Airports Development Office, (817) 222–5634.

Public Agency: City of Colorado Springs, Colorado.

Application Number: 06–10–C–00–COS.

Application Type: Impose and use a PFC.

Total PFC Revenue Approved in this Decision: $3,012,574.

PFC Level: $3.00.

Earliest Charge Effective Date: September 1, 2007.

Estimated Charge Expiration Date: January 1, 2009.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Canopies to cover public surface sidewalks for passenger and baggage movement to ground transportation areas.

Access road to long term parking lot.

Brief Description of Disapproved Project: Terminal circulation road.

Determination: The project does not meet the requirements of § 158.15(c). The FAA could not determine that the project was adequately justified based on the traffic volume information provided by the public agency. In addition, the project does not meet the requirements of § 158.15(b)(1) in accordance with paragraphs 620(a)(4) and 620(b)(1) of FAA Order 5100.38C, Airport Improvement Program Handbook (June 28, 2005).

Decision Date: July 28, 2006.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: County of Milwaukee, Milwaukee, Wisconsin.

Application Number: 06–13–C–00–MKE.

Application Type: Impose and use a PFC.

Total PFC Revenue Approved in this Decision: $46,806,855.

PFC Level: $3.00.

Earliest Charge Effective Date: May 1, 2018.

Estimated Charge Expiration Date: January 1, 2024.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at General Mitchell International Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate firehouse road.

Runway and taxiway shoulder maintenance.

Inline baggage security—construction.

Public restroom renovation—design.

Security system fiber optic replacement—design.

Interactive employee training for safety and security.

Ticketing drive road reconstruction.

E concourse stem.

Brief Description of Withdrawn Project: Southside trituration room.

Date of withdrawal: July 25, 2006.

Decision Date: August 2, 2006.

FOR FURTHER INFORMATION CONTACT: Nancy Nistler, Minneapolis Airports District Office, (612) 713–4353.

Public Agency: Kansas City Department of Aviation, Kansas City, Missouri.

Application Number: 05–05–C–00–MCI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $56,963,842.

Earliest Charge Effective Date: November 1, 2014.

Estimated Charge Expiration Date: February 1, 2017.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Kansas City International Airport (MCI).

Brief Description of Projects Approved for Collection at MCI and Use at MCI at a $4.50 PFC Level:

Two new aircraft rescue and firefighting vehicles.

New aircraft rescue and firefighting facility.

Inline baggage screening.

Brief Description of Project Approved for Collection at MCI for Future Use at Charles B. Wheeler Downtown Airport (MKC) at a $4.50 PFC Level: Fuel farm relocation.

Brief Description of Projects Approved for Collection at MCI and Use at MCI at a $3.00 PFC Level:

Extend taxiways B and D.

Rehabilitate taxiways M and L.

Update airport master plan and Part 150 study update.

Rehabilitate taxiway D.

Airfield lighting rehabilitation.

Terminal improvements—holdrooms.

Upgrade glycol collection system.

Brief Description of Project Approved for Collection at MCI for Future Use at MCI at a $3.00 PFC Level: Airfield snow removal equipment building.

Brief Description of Projects Approved for Collection at MCI and Use at MKC at a $3.00 PFC Level:

Reconstruct runway 1/19.

Perimeter fencing replacement.

Brief Description of Withdrawn Projects:

New airfield sand and deicer storage building.

Triturator and garbage facility.

Date of withdrawal: August 8, 2006.

Decision Date: August 8, 2006.

FOR FURTHER INFORMATION CONTACT: Mark Schenkelberg, Central Region Airports Division, (816) 329–2638.

Public Agency: City of Houston, Texas.

Application Number: 06–01–C–00–HOU.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $163,415,047.

Earliest Charge Effective Date: November 1, 2006.

Estimated Charge Expiration Date: October 1, 2017.

Classes of Air Carriers not Required to Collect PFC's:

(1) Part 135 air taxi/commercial operators filing FAA Form 1800–31; and (2) commuters or small certificated air carriers filing Department of Transportation Form T100.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at William P. Hobby Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate runways 12L/30R and 17/35.

Rehabilitation and modifications to taxiway system.

Expand taxiway electrical system.

Airport drainage and storm water improvements.

Acquire runway 17 protection zone.

Airfield lighting and control.

Central terminal expansion.

Conduct master plan.

Central concourse equipment.

Apron reconstruction.

Taxiway and taxilane reconstruction.

Overlay runway 12R/30L.

Perimeter fencing and obstruction removal.

Access controls and telecommunications for airport operating area.

Conduct environmental impact statement.

Land acquisition for runway 4 protection zone.

Conduct drainage/storm water plan.

PFC consulting, administration, and auditing.

Decision Date: August 10, 2006.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Texas Airports Development Office, (817) 222–5614.

Public Agency: City of Chicago Department of Aviation, Chicago, Illinois.

Application Number: 06–17–C–00–ORD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $73,198,000.

Earliest Charge Effective Date: November 1, 2015.

Estimated Charge Expiration Date: June 1, 2016.

Class of Air Carriers not Required to Collect PFC'S: Air taxi.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

2005/2006 residential home insulation.

2005/2006 school insulation.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: Permanent noise monitoring system upgrade.

Decision Date: August 17, 2006.

FOR FURTHER INFORMATION CONTACT: Chad Oliver, Chicago Airports District Office, (847) 294–7199.

Public Agency: County of Kalamazoo, Kalamazoo, Michigan.

Application Number: 06–05–C–00–AZO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,500,000.

Earliest Charge Effective Date: October 1, 2006.

Estimated Charge Expiration Date: April 1, 2008.

Class of Air Carriers not Required to Collect PFC'S: Non-scheduled Part 135 and air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Kalamazoo/Battle Creek International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal renovation, expansion, new construction, and redesign.

Decision Date: August 22, 2006

FOR FURTHER INFORMATION CONTACT: Jason Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: County of Marquette, Gwinn, Michigan.

Application Number: 06–08–C–00–SAW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $150,711.

Earliest Charge Effective Date: October 1, 2006.

Estimated Charge Expiration Date: May 1, 2008.

Class of Air Carriers not Required to Collect PFC's: None

Brief Description of Projects Approved for Collection and Use:

Runway safety area improvements (phase I—design).

Snow removal equipment (sweeper and blower).

Pavement and marking (airfield markings).

Terminal access.

Aircraft rescue and firefighting/snow removal equipment facility.

Runway lighting (electrical conduit repairs—emergency).

Runway safety area improvements (construction).

Airport master plan study.

Materials (sand) storage building (phase I—design).

Aircraft rescue and firefighting vehicle (draft specifications only).

Runway slab replacement (design).

Aircraft rescue and firefighting vehicle—phase II.

Sand storage building (phase II—construction).

Snow removal equipment.

Runway slab replacement (phase II—construction).

Runway 1 slab replacement (south of Bravo taxiway).

Airfield lighting improvements.

Snow removal equipment.

Rehabilitation of pavements.

Runway 1 slab replacement south (construction) and north of Bravo taxiway (design only).

Airfield lighting improvements (phase II—construction).

Brief Description of Disapproved Projects:

Passenger terminal expansion (design).

Taxiway Bravo reconstruction (design).

Interactive employee training system.

Terminal building expansion (phase II—construction).

Runway 19 instrument landing system.

Taxiway Bravo reconstruction (construction).

Snow removal equipment acquisition.

Runway 1/19 threshold area rehabilitation.

Pavement rehabilitation (rubber removal and painting).

Runway 1 pavement replacement north of taxiway Bravo (construction).

Determination: These projects do not meet the requirements of § 158.33(a)(1). The information provided indicates that the projects would not have been implemented within 2 years of approval.

Fiscal Year 2005 project engineering and administration.

Determination: Engineering and project administration costs must be

assigned to specific development projects.

Decision Date: August 14, 2005.

FOR FURTHER INFORMATION CONTACT: Jason Watt, Detroit Airports District Office, (734) 229–2906.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
98–02–C–02–GUC, Gunnison, CO	03/15/06	$183,754	$179,074	04/01/01	03/01/01
03–04–C–01–PIH, Pocatello, ID	04/05/06	456,500	497,218	10/01/07	04/01/08
94–01–C–08–CVG, Covington, KY	04/22/06	32,872,000	35,936,000	05/01/96	04/01/96
02–03–C–02–PWM, Portland, ME	05/18/06	18,234,688	19,425,419	03/01/13	12/01/13
01–09–C–01–BNA, Nashville, TN	05/31/06	26,005,000	4,145,183	10/01/04	04/01/03
03–08–C–01–JAX, Jacksonville, FL	06/16/06	68,357,263	73,281,526	11/01/08	01/01/08
96–03–I–02–SUN, Hailey, ID	06/19/06	566,335	558,131	06/01/99	06/01/99
99–04–C–01–SUN, Hailey, ID	06/19/06	1,085,105	950,746	04/01/05	08/01/04
99–04–C–02–SUN, Hailey, ID	06/19/06	950,746	950,746	08/01/04	08/01/04
98–02–C–01–SBN, South Bend, IN	06/28/06	1,367,991	1,387,143	06/01/03	11/01/02
95–03–C–03–CLE, Cleveland, OH	06/30/06	20,700,642	19,945,762	02/01/97	11/01/96
03–03–C–01–SFO, San Francisco, CA	07/11/06	539,107,697	609,107,697	11/01/18	01/01/17
98–03–C–07–CVG, Covington, KY	07/24/06	24,833,000	24,852,000	08/01/99	08/01/99
92–01–C–10–SJC, San Jose, CA	07/27/06	70,625,368	64,670,368	07/01/96	07/01/96
99–07–C–02–SJC, San Jose, CA	07/27/06	12,950,000	12,628,000	01/01/02	07/01/02
01–11–C–02–SJC, San Jose, CA	07/27/06	118,161,491	131,055,103	07/01/06	01/01/07
*97–01–C–03–SDF, Louisville, KY	07/31/06	90,600,000	90,600,000	04/01/12	09/01/14
01–02–C–04–SDF, Louisville, KY	07/31/06	10,012,140	10,012,140	03/01/13	12/01/16
03–03–C–02–SDF, Louisville, KY	07/31/06	5,666,800	5,666,800	09/01/13	02/01/18
06–04–C–01–SDF, Louisville, KY	07/31/06	1,267,315	1,267,315	10/01/13	05/01/18

Note: The amendment denoted by an asterisk (*) includes a change to the PFC level changed from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Louisville, KY, this change is effective on October 1, 2006:

Issued in Washington, DC, on September 22, 2006.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 06–8377 Filed 9–29–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on a Proposed U.S. Highway Project in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(1)(1). These actions relate to a proposed highway project on State Route 65 Lincoln Bypass between kilo post 19.3 to 38.3 (post miles 12.0 to 23.8) in Placer County, State of California. These actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or April 2, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Cesar Perez, Project Development Engineer, Federal Highway Administration, 650 Capitol Mall, #4–100, Sacramento, CA 95814, weekdays between 7 a.m. and 4 p.m., telephone 916–498–5065, *cesar.perez@fhwa.dot.gov.* Karen McWilliams, Senior Environmental Planner, California Department of Transportation, 2389 Gateway Oaks Dr., Sacramento, CA 95833, weekdays between 8 a.m. and 4:30 p.m., (916) 274–0568, *karen.mcwilliams@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of California. This project would improve safety and provide congestion relief on State Route 65, Placer County, California. This would be accomplished by constructing a four-lane freeway around the city of Lincoln, in Placer County, from south of Industrial Avenue to north of Riosa Rd. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement for the project, approved on May 25, 2006, a Record of Decision approved on July 18, 2006, and in other documents in the FHWA administrative record. The Final Environmental Impact Statement and other documents in the FHWA administrative record file are available by contacting the FHWA or the California Department of Transportation at the addresses provided above. The FHWA Final Environmental Impact Statement can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist3/projects/lincoln/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act 42 U.S.C. 7401–7671(q).

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. *Historic and Cultural Resources:* Section 106 of the National Historic

Preservation Act of 1966, as amended [16 U.S.C. 470(aa) 11]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

6. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

7. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to his program.)

Authority: 23 U.S.C. I39(1)(1)

Issued on: September 26, 2006.

Maiser Khaled,

Director, Project Development & Environment, Sacramento, California.

[FR Doc. E6–16205 Filed 9–29–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25903; Notice 1]

BMW of North America, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

BMW of North America, LLC (BMW) has determined that certain vehicles that it produced in 2005 and 2006 do not comply with S4.5.1(b)(3) and S4.5.1(e)(3) of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection.'' BMW has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), BMW has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of BMW's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 27,975 model year 2006 BMW X5 vehicles produced between September 1, 2005 and June 28, 2006. The affected vehicles were produced according to FMVSS No. 208 S14, the advanced air bag requirements including air bag suppression and telltale. However, the affected vehicles were not equipped with the corresponding warning labels, specifically the FMVSS No. 208 S4.5.1(b)(3) sun visor label identified in Figure 11, and the S4.5.1(e)(3) removable label on dash identified in Figure 12. Instead, the affected vehicles were equipped with the ''pre-advanced'' air bag warning labels, specifically the FMVSS No. 208 S4.5.1(b)(1) sun visor label identified in Figure 6a, and the S4.5.1(e)(1) removable label on dash identified in Figure 7. This is shown as follows:

SUN VISOR LABEL

Required label: S4.5.1(b)(3) Figure 11	Noncompliant label: S4.5.1(b)(1) fig. 6a
WARNING EVEN WITH ADVANCED AIR BAGS	WARNING DEATH or SERIOUS INJURY can occur.
Children can be killed or seriously injured by the air bag	Children 12 and under can be killed by the air bag.
The back seat is the safest place for children	The BACK SEAT is the SAFEST place for children.
Never put a rear-facing child seat in front	NEVER put a rear-facing child seat in front.
Always use seat belts and child restraints	ALWAYS use SEAT BELTS and CHILD RESTRAINTS.
See owner's manual for more information about air bags	Sit as far back as possible from the air bag.

REMOVABLE LABEL ON DASH

Required label: S4.5.1(e)(3) figure 12	Noncompliant label: S4.5.1(e)(2) figure 7
This Vehicle is Equipped with Advanced Air Bags	WARNING.
Even with Advanced Air Bags.	
Children can be killed or seriously injured by the air bag	Children Can be KILLED or INJURED by Passenger Air Bag.
The back seat is the safest place for children	The back seat is the safest place for children 12 and under.
Never put a rear-facing child seat in the front.	
Always use seat belts and child restraints	Make sure all children use seat belts or child seats.
See owner's manual for more information about air bags.	

BMW has corrected the problem that caused these errors so that they will not be repeated in future production.

BMW believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. BMW states that the labels it actually used are ''more stringent'' and ''more emphatic, which would lead a consumer to act in a more cautious manner, and not in a less safe manner.'' BMW says,

> The difference in the warning message texts between the labels clearly indicates that the warning message on the affected vehicles' labels is stricter when compared to the advanced air bag labels. Therefore, even though the labels are incorrect, they would not result in a decrease in the safety message. Rather, they provide an increased emphasis.

BMW further states that the vehicles are equipped with passenger air bag telltale lamps, and therefore the owners will know from these lamps that the vehicles are equipped with an advanced air bag system.

BMW also says,

* * * [T]he Owners Manual of the affected vehicles contains a description of the advanced air bag system including a description of the passenger air bag system telltale lamp. Owners who consult the Owners Manual will be able to read a description of the advanced air bag system along with a description of the passenger air bag system telltale lamp. Therefore, owners will know from their Owners Manual that their vehicle is equipped with a FMVSS 208 advanced air bag system.

BMW states that it has no record that customers contacted the company with inquiries, complaints, or comments on the air bag warning labels.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 1, 2006.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: September 27, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–16200 Filed 9–29–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2063

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2063, U.S. Departing Alien Income Tax Statement.

DATES: Written comments should be received on or before December 1, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Departing Alien Income Tax Statement.

OMB Number: 1545–0138.

Form Number: 2063.

Abstract: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by the IRS to certify that departing aliens have complied with U.S. income tax laws.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 20,540.

Estimated Time per Response: 50 minutes.

Estimated Total Annual Burden Hours: 17,049.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–16110 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for ADA Accommodations Request Packet

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the ADA Accommodations Packet.

DATES: Written comments should be received on or before December 1, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the packet should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: ADA Accommodations Request Packet.

OMB Number: 1545–2027.

Abstract: Information is collected so that ADA applicants may receive reasonable accommodation, as needed, to take the Special Enrollment Examination.

Current Actions: There are no changes being made to the packet at this time.

Type of Review: This is an extension of a previously approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Average Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 14, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–16118 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 941, 941–PR, 941–SS, Schedule B (Form 941), and Schedule B (Form 941–PR)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 941 (Employer's Quarterly Federal Tax Return), 941–PR (Planilla Para La Declaracion Trimestral Del Patrono-LaContribucion Federal Al Seguro Social Y Al Seguro Medicare), 941–SS (Employer's Quarterly Federal Tax Return-American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands), Schedule B (Form 941) (Employer's Record of Federal Tax Liability), and Schedule B (Form 941–PR) (Registro Suplementario De La Obligacion Contributiva Federal Del Patrono).

DATES: Written comments should be received on or before December 1, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer's Quarterly Federal Tax Return.

OMB Number: 1545–0029.

Form Numbers: 941, 941–PR, 941–SS, Schedule B (Form 941), and Schedule B (Form 941–PR).

Abstract: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report social security and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals, individuals or households, not-for-profit institutions, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 53,907,392.

Estimated Time per Respondent: 6 hours, 43 minutes.

Estimated Total Annual Burden Hours: 361,369,544.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 15, 2006.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E6–16119 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8869

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8869, Qualified Subchapter S Subsidiary Election.

DATES: Written comments should be received on or before December 1, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualified Subchapter S Subsidiary Election.

OMB Number: 1545–1700.

Form Number: 8869.

Abstract: Effective for tax years beginning after December 31, 1996, Internal Revenue Code section 1361(b)(3) allows an S corporation to own a corporate subsidiary, but only if it is wholly owned. To do so, the parent S corporation must elect to treat the wholly owned subsidiary as a qualified subchapter S subsidiary (QSub). Form 8869 is used to make this election.

Current Actions: There are no changes being made to the form at this time.

Affection Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 8 hr., 9 minutes.

Estimated Total Annual Burden Hours: 40,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–16120 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106446–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106446–98 (TD 9003), Relief From Joint and Several Liability (§ 1.6015–5).

DATES: Written comments should be received on or before December 1, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Relief From Joint and Several Liability.

OMB Number: 1545–1719. Regulation Project Number: REG–106446–98.

Abstract: The regulation under section 6015 provides guidance regarding relief from the joint and several liability imposed by section 6013(d)(3). The regulations provide specific guidance on the three relief provisions of section 6015 and on how taxpayers would file a claim for such relief. In addition, the regulations provide guidance regarding Tax Court review of certain types of claims for relief, as well as information regarding the rights of the nonrequesting spouse. The regulations also clarify that, under section 6013, a return is not a joint return if one of the spouses signs the return under duress.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

The estimate of the reporting burden in § 1.6015–5 for filing a claim for relief from joint and several liability is reflected in the burden of Form 8857.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 20, 2006.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E6–16121 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105946–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–105946–00 (TD 8995), Mid-Contract Change in Taxpayer (§ 1.460–6).

DATES: Written comments should be received on or before December 1, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Allan Hopkins at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mid-Contract Change in Taxpayer.

OMB Number: 1545–1732.

Regulation Project Number: REG–105946–00.

Abstract: The information is needed by taxpayers who assume the obligation to account for the income from long-term contracts as the result of certain nontaxable transactions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 10,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 18, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–16122 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–54–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–54–90 (TD 8459), Settlement Funds (§§ 1.468B–1, 1.468B–2, 1.468B–3, and 1.468B–5).

DATES: Written comments should be received on or before December 1, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins at (202) 622–

6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Settlement Funds.

OMB Number: 1545–1299.

Regulation Project Number: IA–54–90.

Abstract: This regulation prescribes reporting requirements for settlement funds, which are funds established or approved by a governmental authority to resolve or satisfy certain liabilities, such as those involving tort or breach of contract. The regulation relates to the tax treatment of transfers to these funds, the taxation of income earned by the funds, and the tax treatment of distributions made by the funds.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not for-profit institutions, farms and Federal, State, local or tribal governments.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 2 hours, 22 minutes.

Estimated Total Annual Burden Hours: 3,542.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 18, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–16123 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–246249–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–246249–96 (TD 9010), Information Reporting Requirements for Certain Payments Made on Behalf of Another Person, Payments to Joint Payees, and Payments of Gross Proceeds From Sales Involving Investment Advisers (§§ 1.6041–1 and 1.6045–1).

DATES: Written comments should be received on or before December 1, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Reporting Requirements for Certain Payments Made on Behalf of Another Person, Payments to Joint Payees, and Payments of Gross Proceeds From Sales Involving Investment Advisers.

OMB Number: 1545–1705.

Regulation Project Number: REG–246249–96.

Abstract: This regulation under section 6041 clarifies who is the payee for information reporting purposes if a check or other instrument is made payable to joint payees, provides information reporting requirements for escrow agents and other persons making payments on behalf of another person, and clarifies that the amount to be reported as paid is the gross amount of the payment. The regulation also removes investment advisers from the list of exempt recipients for information reporting purposes under section 6045.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The estimate of the reporting burden in § 1.6041–1 is reflected in the burden of Form 1099-MISC. The estimate of the reporting burden in § 1.6045–1 is reflected in the burden of Form 1099–B.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide Information.

Approved: September 18, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–16124 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–A, United States Additional Estate Tax Return.

DATES: Written comments should be received on or before December 1, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: United States Additional Estate Tax Return.

OMB Number: 1545–0016.

Form Number: 706–A.

Abstract: Form 706–A is used by individuals to compute and pay the additional estate taxes due under Internal Revenue Code section 2032A(c) for an early disposition of specially valued property or for an early cessation of a qualified use of such property. The IRS uses the information to determine that the taxes have been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 180.

Estimated Time Per Respondent: 8 hours, 11 minutes.

Estimated Total Annual Burden Hours: 1,475.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 21, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–16127 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–252936–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning a final regulation, REG–252936–96 (TD 8780), Rewards for Information Relating to Violations of Internal Revenue Laws (section 301.7623–1).

DATES: Written comments should be received on or before December 1, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rewards for Information Relating to Violations of Internal Revenue Laws.

OMB Number: 1545–1534.

Regulation Project Number: REG–252936–96.

Abstract: The regulations explain the procedure for submitting information that relates to violations of the internal revenue laws. The regulations also require a person claiming a reward for information to provide, in certain circumstances, identification of evidence that the person is the proper claimant.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, businesses or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 3 hr.

Estimated Total Annual Burden Hours: 30,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information

displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 20, 2006.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. E6–16128 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 24, 2006, at 11 a.m., Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, October 24, 2006, at 11 a.m., Central Time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, PO Box 3205, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for dial-in information.

The agenda will include the following: Various IRS issues

Dated: September 22, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–16125 Filed 9–29–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
October 2, 2006

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600, and 635

Atlantic Highly Migratory Species; Recreational Atlantic Blue and White Marlin Landings Limit; Amendments to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfish; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600, and 635

[Docket No. 030908222-6241-02; I.D. 051603C]

RIN 0648–AQ65

Atlantic Highly Migratory Species; Recreational Atlantic Blue and White Marlin Landings Limit; Amendments to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfish

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

ACTION: Final rule; decision on petition for rulemaking.

SUMMARY: NMFS finalizes the Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP). This Final Consolidated HMS FMP changes certain management measures, adjusts regulatory framework measures, and continues the process for updating HMS essential fish habitat. This final rule could impact fishermen and dealers for all Atlantic HMS fisheries. The final rule will: establish mandatory workshops for commercial fishermen and shark dealers; implement complementary time/area closures in the Gulf of Mexico (GOM); implement criteria for adding new or modifying existing time/area closures; address rebuilding and overfishing of northern albacore tuna and finetooth sharks; implement recreational management measures for Atlantic billfish; modify bluefin tuna (BFT) General Category subperiod quotas and simplify the management process of BFT; change the fishing year for tunas, swordfish, and billfish to a calendar year; authorize speargun fishing gear in the recreational fishery for bigeye, albacore, yellowfin, and skipjack (BAYS) tunas; authorize buoy gear in the commercial swordfish handgear fishery; clarify the allowance of secondary gears (also known as cockpit gears); and clarify existing regulations. This final rule also announces the decision regarding a petition for rulemaking regarding closure areas for spawning BFT in the Gulf of Mexico.

DATES: This final rule is effective November 1, 2006, except for the addition of § 635.8 which will be effective January 1, 2007.

ADDRESSES: Copies of the Final Consolidated HMS FMP and other relevant documents are available from the Highly Migratory Species Management Division website at *www.nmfs.noaa.gov/sfa/hms* or by contacting Karyl Brewster-Geisz at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Margo Schulze-Haugen, or Chris Rilling at 301–713–2347 or fax 301–713–1917; Russell Dunn at 727–824–5399 or fax 727–824–5398; or Mark Murray-Brown at 978–281–9260 or fax 978–281–9340.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The Final Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

NMFS announced its intent to prepare an Environmental Impact Statement (EIS) amending the the Atlantic Billfish FMP and FMP for Atlantic Tunas, Swordfish, and Sharks on July 9, 2003 (68 FR 40907). On April 30, 2004 (69 FR 23730), NMFS announced the availability of an Issues and Options Paper and nine scoping meetings. On May 26, 2004 (69 FR 29927), NMFS extended the comment period on the Issues and Options Paper, and announced an additional scoping meeting. A summary of the major comments received during scoping was released in December 2004 and is available on the HMS Management Division website or by requesting a hard copy (see **ADDRESSES**). During scoping, NMFS referred to this project as Amendment 2 to the existing FMPs. Starting with the Predraft stage, NMFS has referred to this project as the Draft Consolidated HMS FMP.

In February 2005, NMFS released the combined Predraft to the Consolidated HMS FMP and annual Stock Assessment and Fishery Evaluation (SAFE) Report. Comments received on both the Issues and Options Paper and the Predraft were considered when drafting and analyzing the ecological, economic, and social impacts of the alternatives in the proposed rule. A summary of the comments received on the Predraft was released in June 2005 and is available on the HMS Management Division website or by requesting a hard copy (see **ADDRESSES**).

On August 19, 2005, NMFS published the proposed rule (70 FR 48804), and the Environmental Protection Agency (EPA) published the Notice of Availability (NOA) for the Draft Environmental Impact Statement (DEIS) and the accompanying Draft Consolidated HMS FMP (70 FR 48705). The 60-day comment period on the proposed rule was initially open until October 18, 2005. However, because many of NMFS' constituents were adversely affected by Hurricanes Katrina and Rita in 2005, and the resultant cancellation of three public hearings in the Gulf of Mexico region, NMFS extended the comment period on the proposed rule until March 1, 2006 (70 FR 58177, October 5, 2005) for a total of 194 days. During that time, NMFS held 24 public hearings, gave presentations at the five Atlantic Regional Fishery Management Councils and at the Gulf and Atlantic States Marine Fisheries Commissions, and received several thousand written comments. These comments are summarized below under Response to Comments.

In the proposed rule, NMFS also took additional actions including:(1) a withdrawal of the 2003 proposed rule to implement the International Commission for the Conservation of Atlantic Tunas (ICCAT) 250 recreationally caught marlin landings limit (September 17, 2003; 68 FR 54410); (2) a decision not to include in the Draft Consolidated HMS FMP the exemption to the ''no sale'' provision for the artisanal handline fishery in Puerto Rico, as outlined in the 1988 Billfish FMP; and (3) an analysis of a petition for rulemaking from Blue Ocean Institute et al. that requested NMFS close a particular BFT spawning area in the Gulf of Mexico (copies of the petition are available upon request, see **ADDRESSES**). Item 1 above was completed at the proposed rule stage. Item 2 is finalized in this final rule with the consolidation of the two FMPs, and is not discussed further. The decision regarding the petition for rulemaking (item 3) is described in this final rule after the changes to proposed rule section.

This final rule does not contain information regarding the management history of Atlantic HMS, EFH, or the alternatives considered. Those issues are discussed in the proposed rule and are not repeated here. This final rule does contain responses to comments received during the public comment period, a description of changes to the proposed rule, and a decision regarding a petition to rulemaking. The response to comments section is organized similarly to the organization of the Final HMS FMP and the proposed rule. The description of the changes to the

proposed rule can be found after the response to comment section. The decision regarding the petition for rulemaking can be found after the changes to the proposed rule section.

Information regarding the management history of Atlantic HMS, EFH, and the alternatives considered was provided in the preamble of the proposed rule and is not repeated here. Additional information can be found in the Final Consolidated HMS FMP available from NMFS (see **ADDRESSES**).

Most of the measures in this rule, such as the measures relating to time/area closures, BFT, authorized fishing gears, and regulatory housekeeping, will be effective on November 1, 2006. However, the workshop alternatives (§ 635.8) will be effective on January 1, 2007, in order to coordinate the workshop requirements with the fishing vessel and dealer renewal timeframes. The management measures related to the directed billfish fishery (e.g., use of circle hooks in billfish tournaments) will also be effective on January 1, 2007, in order to allow anglers and small entities time to adjust to the new requirements. Furthermore, as a result of this final rule, all of the HMS management programs will be implemented on a calendar year cycle (January 1 to December 31). The Atlantic shark management timeframe will maintain the status quo, whereas billfish, tunas, and swordfish will shift from a fishing year (June 1 - May 31) to a calendar year at different times in 2007. Atlantic billfish will shift to a calendar year on January 1, 2007. Tunas and swordfish will shift to a calendar year on January 1, 2008. To transition from a fishing year to a calendar year for tunas and swordfish, NMFS will establish an abbreviated 2007 fishing year via a separate action for BFT and swordfish to cover the months between the end of the 2006 fishing year (May 31, 2007) and the start of the new 2008 calendar year (January 1, 2008).

Response to Comments

A large number of individuals and groups provided both written and verbal comments during the public comment period. The comments are summarized below together with NMFS's responses. All of the comments are grouped together in a format similar to that utilized in the preamble of the proposed rule. There are nine major groupings: Bycatch Reduction; Rebuilding and Preventing Overfishing; Management Program Structure; Essential Fish Habitat (EFH) Update; Economic and Social Impacts; Consolidation of the FMPs; Objectives of the FMP; Comment Period/Outreach; and General.

Within many of these major groupings are several separate subheadings. The comments are numbered consecutively, starting with 1, at the beginning of each of these separate subheadings. The subheadings under ''Bycatch Reduction'' are: (A) Workshops; and, (B) Time/Area Closures. The subheadings under ''Rebuilding and Preventing Overfishing'' are: (A) Northern Albacore Tuna; (B) Finetooth Sharks; and, (C) Atlantic Billfish. The subheadings under ''Management Program Structure'' include: (A) Bluefin Tuna Quota Management; (B) Timeframe for Annual Management of HMS Fisheries; (C) Authorized Fishing Gears; and, (D) Regulatory Housekeeping Measures. There are no separate subheadings under the major groupings entitled ''EFH Update''; ''Economic and Social Impacts''; ''Consolidation of the FMPs''; ''Objectives of the FMP''; and, ''Comment Period/Outreach.''

All of the comments in the major grouping entitled ''General'' are numbered consecutively, beginning with 1, however the grouping is further divided into subsections that address general comments related to recreational HMS fishing; commercial HMS fishing; longlines; swordfish; tunas; sharks; fishing mortality and bycatch reduction; permitting, reporting and monitoring; enforcement; and ICCAT.

Bycatch Reduction

A. Workshops

Comment 1: NMFS should have workshops for the recreational fishing industry explaining the use of circle hooks.

Response: NMFS has conducted educational outreach efforts to promote the use of circle hooks in recreational fisheries in the past and will continue to do so in the future. NMFS has distributed information on circle hooks using informational pamphlets, and in person by attendance at billfish tournaments. This final rule will implement shark identification and careful release and disentanglement workshops as required by Endangered Species Act (ESA) Biological Opinions (BiOps). The Agency may consider hosting voluntary workshops to address the use of circle hooks in the recreational fishery and may provide additional information on circle hooks at billfish tournaments.

i. Protected Species Safe Handling, Release, and Identification Workshops for Pelagic Longline, Bottom Longline, and Gillnet Fishermen

Comment 2: Post-release survival is important to any successful conservation management regime and sustainable fisheries. NMFS needs additional education and outreach workshops, as well as cooperative research initiatives, before significant reductions in post-release mortality can be achieved.

Response: The protected species safe handling, release, and identification workshops are intended to reduce the mortality of sea turtles, smalltooth sawfish, and other protected resources and non-target species captured incidentally in the HMS pelagic and bottom longline and gillnet fisheries. These workshops are required to comply with the 2003 and 2004 ESA BiOps. Owners and operators of PLL, BLL, and gillnet vessels will receive instruction on techniques for disentanglement, resuscitation, release, and identification of protected resources and other non-target species. The goal of the workshops is to increase fishermen's proficiency with required release equipment and protocols to reduce the number of protected and non-target species mortalities. Through the Northeast Distant (NED) statistical area experiment, NMFS has shown that significant bycatch reductions can be achieved through proper research, education, and outreach. These workshops are intended to disseminate information learned from the NED experiment, as well as other information for the BLL and gillnet fisheries.

Comment 3: Several comments supported mandatory protected species workshops for captains and owners. Some of those comments include: owners and captains should attend the workshops, but attendance should not be mandatory for the crew because it would not be feasible for crew members, who may not be U.S. citizens, to attend a workshop; owners' attendance would discourage hiring untrained captains who do not have the expertise to properly release sea turtles; support for mandatory training to reduce post-release mortality of longline-caught marine mammals and turtles; the GMFMC supports mandatory workshops for captains on pelagic longline vessels; getting their gear off the turtles should be all the incentive fishermen need; industry will benefit from attending these workshops because it will enable them to avoid further regulations; NMFS needs to comply with the BiOp to keep the fishery open; workshops are a good investment for the fishermen; and, EPA supports alternatives A2 and A3 requiring mandatory workshops on handling protected species captured or entangled in fishing gear for all HMS pelagic and bottom longline vessel owners (A2) and operators (A3). EPA

also supported preferred alternatives A5 (mandatory workshops/certification for shark gillnet vessel owners/operators).

Response: Under the selected alternatives, NMFS will require owners and operators, but not crew members, of HMS longline and shark gillnet vessels to attend the protected species safe handling, release, and identification workshops. HMS longline and gillnet vessel owners will be required to attend and successfully complete the workshop before renewing their HMS fishing permit in 2007. Without workshop certification, the vessel's permit will not be renewed. Operators will be required to attend the workshop to ensure that at least one person on board the vessel, who is directly involved with the vessel's fishing activities, has been successfully trained in the proper safe handling, release, and identification of protected species. Without an operator trained in these techniques, the vessel will be prohibited from engaging in HMS PLL, BLL, and gillnet fishing activities. A safe handling, release, and identification workshop certificate will be required on board HMS permitted longline and gillnet vessels during fishing operations. Due to the large universe of HMS longline and shark gillnet crew members, NMFS will not require their attendance at these workshops. NMFS encourages operators to transfer the knowledge and skills obtained from successfully completing the workshops to the crew members, potentially increasing the proper release, disentanglement, and identification of protected resources. While crew members are not required to attend the workshops, to the extent practicable, the workshops will be open to anyone who wishes to attend and receive certification.

Comment 4: NMFS received several comments supporting mandatory workshop certification for all HMS commercial and recreational hook and line fisheries. Those comments include: Handling and release workshops should be implemented immediately for all HMS commercial and recreational hook and line fisheries in order to gain the maximum benefit from mitigation technologies and fishing practice; training the greatest number of crew members is the key to protecting these imperiled species. To offset the economic impact, we support a longer interval between required training for the rest of the crew, but not a complete exemption; and, all HMS fishermen should the complete workshops.

Response: This final rule requires owners and operators of PLL, BLL, and gillnet vessels to obtain the safe handling, release, and identification workshop certification. Certified operators will be encouraged to transfer the knowledge, skills, and protocols obtained from these workshops to the vessel's crew members. While these workshops are mandatory for owners and operators, the workshops will also be open to other interested parties, including crew members and other HMS fishermen. Crew members that may have an opportunity to serve as an operator on board a vessel are encouraged to obtain the workshop training and certification. Crew members will not be required to obtain certification in the safe handling and release protocols because the average crew member's individual cost to attend the workshop is greater than the owner and operator. Additional information suggests that turnover is higher with the vessel's crew, making it difficult to continue operating a vessel with a fully certified crew. With at least one individual on board the vessel trained and proficient in the safe handling and release protocols, the likelihood of the safe release and disentanglement of protected species increases significantly. While implementing mandatory workshops for all commercial and recreational HMS fishermen is a laudable goal, NMFS does not have the resources to train such a large group of individuals at this time. Nearly 30,000 HMS recreational permit holders would need to be trained and certified. The cost and logistics of doing this would be prohibitive. However, NMFS may consider these workshops and other means for educating these permit holders in the future.

Comment 5: NMFS received comments opposed to the protected species workshops. These comments include: handling bycatch correctly wastes too much time on a valuable money-making longline trip; I am opposed to alternative A2 and part of A5, mandatory workshops and certification for all HMS pelagic and bottom longline and shark gillnet vessel owners because it is unnecessary, unless they are an owner and an operator; owners may not be the vessel operator on fishing trips. The first priority should be the vessel operator onboard while at sea on fishing trips.

Response: NMFS agrees that handling bycatch correctly may take extra time and effort. However, proper handling of bycatch ensures the continued survival of protected, threatened, and endangered species, prevents an exceedance of the incidental take statement (ITS), and prevents a shutdown of the fishery. NMFS realizes that many vessel owners may not operate, or be aboard, their vessels during fishing trips. Under this rule, protected species safe handling, release, and identification workshops are mandatory for all longline and gillnet vessel operators. NMFS will encourage these operators to disseminate the workshop information to their fishing crews. By certifying vessel owners, NMFS ensures that the owners are aware of the certification requirement and skills and will hold them accountable for engaging in fishing activities without a certified operator onboard. Additionally, the certification requirement will be linked to a vessel's limited access permits and owners will not be able to renew their permits without successful completion of the required workshop. NMFS requires that vessel operators follow safe release and handling protocols when they have interacted with certain protected species. All other non-marketable species should be released in a way that maximizes their chances of survival. NMFS requires vessel owners and operators to meet or exceed the performance standards described in the 2004 BiOp.

Comment 6: NMFS received comments suggesting that the operator be required to train the vessel's crew with the safe handling and release protocols. Those comments include: alternatives A3 and A5 should include a requirement that the certified vessel operator train new crew members prior to each trip as is customary for safety drills; and, it should be clarified that a trained and certified owner or operator must be aboard at all times and that this individual is responsible for ensuring that proper release and disentanglement gear is aboard, the crew is informed, and correct procedures are followed.

Response: Owners and operators of HMS permitted longline and gillnet vessels will be required to obtain the protected species safe handling, release, and identification workshop certification before the vessel's permit expires in 2007. Operators will be required to be proficient in the safe handling and release protocols to ensure that there is an individual on board the vessel with the necessary skills to disentangle, safely release, and accurately identify any protected species caught in the vessel's gear. Owners and operators will be encouraged to explain and demonstrate the safe handling and release protocols to the vessel's crew members. Owners and operators will not be required to train crew members, as this requirement would be difficult to monitor and enforce. While crew members are not required to attend the protected species

safe handling, release, and identification workshops, to the extent practicable, these workshops will be open to individuals interested in receiving the certification.

Comment 7: NMFS received comments in support of training fishermen in the proper release of prohibited species and billfish, as well as protected species. These comments include: NMFS should include safe release training for sharks and billfishes in these workshops; these workshops should be referred to as ''Careful Handling and Release Workshops,'' rather than protected species workshops because the workshops are appropriate for many species; and, the scope of the protected species workshops should be expanded to include prohibited species.

Response: NMFS agrees that safe handling, release, and identification training may be beneficial to all participants in HMS fisheries, including those that interact with sharks and billfishes. The need for protected species safe handling, release, and identification workshops stems from two BiOps issued for the commercial shark fishery and the pelagic longline fishery. These two BiOps also require outreach to the commercial fisheries employing PLL, BLL, and shark gillnet gear on the proper safe handling, release, and identification of protected species. To comply with these BiOps, the intent of these workshops is to reduce the post-release mortality of sea turtles that are most frequently caught by participants using BLL or gillnet gear to target sharks or PLL gear to target swordfish and tunas. However, the techniques, equipment, and protocols taught at the workshops, although specific to sea turtles, could be used to safely disengage hooks in other fish, such as billfish and sharks, and/or mammals that may be encountered. As NMFS collects additional data regarding the best methods to use to release billfish and other species, NMFS may consider modifying the existing workshops to include information on releasing these other species. Until that time, use of the dehooking equipment and protocols could be employed to safely dehook and release billfish and other non-target species. This use could increase post-release survival rates of non-target species. While workshop attendance and certification would not be mandatory for recreational fishermen, these individuals are welcome to attend voluntarily any of the workshops on safe handling, release, and identification to become more familiar with these techniques and protocols.

Comment 8: NMFS received comments on grandfathering individuals who attended the industry certified workshops held in Orlando, Florida and New Orleans, Louisiana. Those comments include: the industry should be recognized for holding workshops before NMFS finalized mandatory workshops; the three-year clock should start ticking on January 1, 2007, for those who are grandfathered in, not from when they took the workshop; certification should be given to fishermen and owners who attended previously held workshops; 85 percent of pelagic longline fishermen were trained and industry certified in 2005. The industry was supportive and actively engaged. These workshops should serve as a template for the future workshops; if the industry-certified sea turtle handlers who have already attended and passed the industry mandatory certification classes are required to do something, it should be an online review and should not have to lose additional time at sea and incur additional travel expenses; and, the process should be streamlined for these individuals to receive their initial certification.

Response: NMFS agrees that industry should be recognized for holding voluntary workshops before NMFS finalized the Consolidated HMS FMP. As such, all owners and operators that, as documented by workshop facilitators, attended and successfully completed industry certification workshops held on April 8, 2005, in Orlando, FL, and on June 27, 2005, in New Orleans, LA, will automatically receive valid protected species workshop certificates prior to January 1, 2007. The certification must be renewed prior to the expiration date printed on the workshop certificate and will need to be renewed prior to renewing their HMS permit. Generally, the certificate will expire every three years consistent with the expiration date of the permit. However, if the certificate is received during a month that is not the owner's or operator's birth month, the certificate may expire in slightly less or slightly more than three years. For example, if the person's birth month is June and they receive the certificate in March, the certificate would be valid for slightly more than three years from the date of completion of the workshop. Those who participated in the industry-sponsored workshops will have three years from their permit renewal in 2007 to renew their workshop certification. Should new information or protocols become available prior to re-certification of any owner or operator, NMFS will disseminate the new information or protocols to the certified individuals prior to their next workshop.

Comment 9: NMFS received several comments requesting careful consideration when scheduling the workshops. Comments include: the lunar cycles should be considered when scheduling the workshops; workshops during closed season can still inconvenience people because shark fishermen also fish for wahoo, dolphin, etc.; NMFS needs to be cognizant of the time burden involved for fishermen; the mandatory workshops should be held only for critical issues because fishermen must be out fishing to be profitable; and, there needs to be flexibility in the process because not everyone will be able to attend the workshops.

Response: To the extent practicable, NMFS will consider lunar cycles and their resultant impacts on the availability of HMS participants when scheduling protected species safe handling, release, and identification workshops. However, since the Agency does not know the other fisheries in which fishermen may be participating at all times, the Agency cannot guarantee that each workshop will be held at a time that would minimize lost fishing opportunities. These workshops will be held in areas with high concentrations of permit holders, according to the addresses provided when applying for an HMS permit. The workshop schedule will be available in advance to allow fishermen to attend a workshop that is most convenient to them. The Agency may provide an opportunity for the industry to schedule one-on-one training at the expense of the individual (i.e., trainer fees), if they are unable to attend any of the previously scheduled workshops.

Comment 10: Some identification training should be provided to the owners and operators during the release and disentanglement workshops.

Response: Species identification is vital for determining how best to handle a de-hooking event, and also enhances the amount and quality of data available regarding protected species interactions. Accurate species identification is also important for compliance with HMS fishery regulations, including the avoidance of prohibited species, maintaining quota limits, and accurate data collection. NMFS intends to make education a key component of the workshops, and will provide workshop participants with training to safely disentangle, resuscitate, and release sea turtles, as well as identify and release other protected species such as marine mammals and smalltooth sawfish. Sea turtle identification guides are also

available on the internet at *http://www.nmfs.noaa.gov/sfa/hms/*. Some marine mammal identification information can be obtained from the Office of Protected Resources website: *http://www.nmfs.noaa.gov/pr/species/mammals/*. The HMS website also contains a link (HMS ID Guide) to the Rhode Island Sea Grant bookstore where you may purchase identification guides for marine mammals, sharks, tunas, and billfish.

Comment 11: NMFS received several comments on alternatives A6 and A16, certification renewal timetable. Those comments include: renewal of the workshop certification should occur every three years; NMFS should recertify every three years, but recertification every five years would be better; recertification more frequently than every three years would be too much; the workshop certification requirement could be an impediment to someone selling a vessel if one cannot transfer the certification; certification should be tied to the operator, not the vessel; and, the EPA supports alternative A6.

Response: Under the selected alternative, owners and operators of HMS longline and shark gillnet vessels will be required to renew the mandatory protected species safe handling, release, and identification workshop certification every three years. A three-year period for recertification will maintain proficiency in the release, disentanglement and identification protocols, and allow NMFS to update owners and operators on new research and developments related to the subject matter while not placing an excessive burden on the participants (e.g., lost fishing time and travel to attend workshops). NMFS considered recertifying owners and captains every five years, but determined that it allows a more extensive period of time to lapse between certification workshops, possibly affecting proficiency and the ability to obtain the latest updates on research and development of safe handling and dehooking protocols. NMFS also considered recertifying owners and operators every two years, but did not select the option because it would likely have the greatest economic burden for the participants due to increased frequency. Federally permitted shark dealers will also be required to renew the mandatory Atlantic shark identification workshop certification on a three-year timetable. A renewal frequency of three years ensures proficiency in shark identification and will provide an update on new developments in shark identification and HMS regulations.

The workshop certification will not be transferable to any other person and will state the name of the permit holder on the certificate. If acquiring an HMS limited access permit (LAP) from a previous permit holder, the new owner will need to obtain a workshop certification prior to transferring the permit into the new owner's name. This requirement ensures that every HMS limited access permit (LAP) owner is fully aware of and accountable for the mandatory protocols that must be followed on board a vessel with longline gear.

The initial operator certification will be linked to the renewal of the vessel's HMS LAP(s) in 2007. If the vessel owner holds multiple HMS LAPs, the operator would need to be certified prior to the earliest expiration date on any of the permits in 2007. After the initial certification, the operator's workshop certificate would need to be renewed prior to the expiration date on the operator's workshop certificate.

Comment 12: PLL, BLL, and gillnet vessel owners may need to be allowed proxies as well as dealers. NMFS should consider a proxy for elderly owners.

Response: The 2004 BiOp specifically requires captains to be certified in the safe handling, release, and identification protocols. This rule requires that operators, not captains, attend these workshops as operators are already defined in the regulations as the ''master or other individual aboard and in charge of that vessel.'' This rule also requires vessel owners for vessels employing longline or gillnet gear to attend the workshops to educate the vessel owner in the protocols, requirements, and responsibilities of participating in the commercial shark or swordfish commercial fisheries. Vessel owners will be held accountable for preventing their vessel from engaging in fishing activities without a certified operator on board. NMFS is concerned that vessel owners would select proxies that are not involved with the day-to-day operation of their vessel, thus compromising the goals of these workshops and weakening the vessel owner's accountability for the activities conducted on board the vessel. Non-compliance with the requirements of the 2003 and 2004 BiOps could result in additional, more restrictive management measures in the future.

Comment 13: EPA commented that the Draft Consolidated HMS FMP would be improved by providing a more balanced discussion of workshop costs, and noted that in today's society, most trades and professions require practitioners to obtain licenses demonstrating competence. Additionally, without authorized takings procedures, owners/operators might have to defend themselves in courts of law for violating ESA. EPA stated that if one considers the time invested in attending a one-day workshop, this measure seems like a bargain. EPA questioned the assumption inherent in the cost/earnings analysis that accepts the premise that time spent becoming qualified to practice longline fishing is time lost, and of no value.

Response: NMFS acknowledges that many trades and professions require practitioners to obtain licenses demonstrating competence. However, there is still an economic opportunity cost associated with any required activity that would not otherwise be taken voluntarily. In the case of analyzing the economic costs associated with workshop alternatives, NMFS assumed the activity that workshop participants would be engaged in, if they were not attending the workshop, would be fishing. NMFS's use of wage rates from primary job activities as the opportunity cost of engaging in other activities is commonly accepted practice by economists.

NMFS recognizes that the training provided by workshops is valuable to fishermen and may offset some unquantifiable portion of the opportunity costs that were estimated. The opportunity cost estimates provided in the Draft Consolidated HMS FMP were considered to be upper bounds on the potential economic costs associated with attending workshops. Information quantifying the economic value of time spent at the workshops is not currently available to further refine the upper bound cost estimates used in the economic analysis of workshop alternatives.

ii. Atlantic Shark Identification Workshops

Comment 14: NMFS received several comments in support of alternative A9, mandatory Atlantic shark identification workshops for all shark dealers. Those comments include: dealers should be required to attend the shark identification workshops; if shark dealers cannot properly identify a fish, their license and ability to be a dealer should be permanently revoked; workshops for species identification are generally unnecessary for commercial fishermen although shark identification workshops may be necessary for dealers or recreational fishermen; NMFS needs to rename the Identification Workshops as being Shark and not HMS, since only shark dealers are expected to be in attendance and certified at identifying sharks, not tunas; NMFS should have two days of training, one mandatory

(dealers) and one voluntary (fishermen, public, etc); workshops give the dealer a good housekeeping seal of approval; NMFS should consider prioritizing the certification of shark dealers because the universe is so large; prioritization of shark dealers could be based upon a minimum annual purchase of shark products; and, EPA supported alternative A9, stating that accurate species identification is necessary for compliance with HMS fishery regulations, including avoidance of prohibited species, maintaining quota limits, and also for accurate data collection.

Response: Under the selected alternative, A9, NMFS renamed the HMS identification workshops as Atlantic shark identification workshops because only federally permitted shark dealers will be required to attend the workshops and receive certification. Identification training will be focused on various species of sharks likely to be encountered by the dealer in both whole and dressed form. These mandatory identification workshops will improve the ability of shark dealers to identify sharks to the species level and will improve the data collected for quota monitoring, stock assessments, and decision making processes for formulating appropriate fishery management strategies. While mandatory for shark dealers, these workshops will be open to other interested individuals, to the extent possible. Workshop locations will be based on dealer permit addresses. A schedule of workshops will be available in advance to allow dealers to select the workshop most convenient to their schedule. The Agency may provide an opportunity for the industry to schedule one-on-one training at the expense of the individual (i.e., trainer costs), if they are unable to attend any of the previously scheduled workshops.

Comment 15: NMFS received several comments concerned about the effectiveness of the Atlantic shark identification workshops for only shark dealers. The comments include: limiting HMS identification workshops to dealers only will mean proper species identification will come too late for prohibited species such as dusky sharks and such a strategy will not address problems with recreational compliance. NMFS should expand the required audience at the HMS identification workshops and/or expand the scope of the protected species workshops to include identification and safe release of prohibited shark species; the identification workshop for dealers only is not enough. It will help with data collection and stock assessments, but it will not help with conservation; and, the Agency should focus its efforts on the directed shark fishermen that are actually landing sharks and dealers with 90 percent of the catch.

Response: Under the selected alternatives, Atlantic shark identification workshops will be mandatory for federally permitted shark dealers, but, to the extent possible, these workshops would be open to other interested individuals (e.g., individuals participating in the shark fishery, port agents, law enforcement officers, state shark dealers, and recreational fishermen) on a voluntary basis. Under this rule, federally permitted shark dealers will be required to take this training in an effort to reduce unclassified shark landings and improve species-specific landings data. Improvements in shark dealer data will improve existing quota monitoring programs as well as improve the accuracy of future stock assessments. With improved shark identification, dealers will be more accountable for the sharks purchased, potentially discouraging the purchase of prohibited species. If there is no market for prohibited species, fishermen may modify their behavior and safely release any incidental catch of prohibited species. To train and certify the greater than 25,000 anglers that participate in the HMS recreational fishery exceeds the Agency's resources at this time. While commercial and recreational shark fishermen will not be required to attend the Atlantic shark identification workshops, to the extent possible the workshops will be open to anyone who wishes to attend and receive certification. In the future, additional actions may be taken to improve the data collected from the HMS recreational industry.

Comment 16: NMFS received comments on Alternative A15, mandatory attendance at HMS identification workshops for all HMS Angling category permit holders. Those comments include: mandatory attendance for all HMS Angling category permit holders would be a substantial undertaking; HMS identification workshops should be mandatory for all fishermen that land sharks; HMS Angling category permit holders should also have to attend because they are the primary misidentification and non-reporting problem; most commercial fishermen know how to identify species; and, some of the species identification problem is an angler problem.

Response: At this time, Atlantic shark identification workshops will not be required for HMS Angling category permit holders. Under this rule, all federally permitted shark dealers will be required to attend the Atlantic shark identification workshops. The dealer's ability to renew a Federal dealer permit will be conditioned upon the successful completion of the workshop. The purpose of the Atlantic shark identification workshops is to improve the data collected from the fishery, thereby improving quota monitoring and stock assessments. Dealer reports are an important data source for quota monitoring and management decisions; and therefore, these workshops will have greater impact on improving the accuracy of the shark species identification. While the recreational fishery also contributes to shark misidentification, mandatory attendance for the angling community would not resolve the data quality issues associated with commercial vessel logbooks and dealer reports. Thus, quota monitoring and commercial regulatory compliance would not benefit from mandatory angler attendance as they would under mandatory shark dealer certification. Commercial and recreational shark fishermen are not required to attend the Atlantic shark identification workshops, but to the extent possible, the workshops will be open to anyone who wishes to attend and receive certification. The money and time required to track and link permits to the workshop certification, to hold an appropriate number of workshops to certify all HMS anglers permit holders (over 25,000 individuals), and to enforce the workshop requirement for all HMS angler permit holders currently exceed the Agency's resources. In the future, additional actions may be taken to improve the data collected from the HMS recreational industry.

Comment 17: NMFS received two comments about mandatory workshops for state shark dealers. Those comments are: HMS identification workshops should be held for state dealers to encompass the entire universe of dealers reporting unclassified sharks; and, NMFS needs more information on state shark landings. The Agency is wasting the industry's time requiring the wrong people to attend these workshops.

Response: NMFS does not have jurisdiction over state permitted shark dealers and cannot require their attendance at Federal workshops. However, to the extent possible, the Atlantic shark identification workshops would be open to other interested individuals, including state shark dealers, on a voluntary basis. To purchase sharks from a federally permitted vessel, a state shark dealer must also possess a Federal shark dealer

permit and, therefore, will be required to attend the workshops.

Comment 18: NMFS should require port agents to attend these workshops to improve their shark identification skills. Law enforcement needs to learn how to identify sharks.

Response: This action does not require port agents or law enforcement to attend the Atlantic shark identification workshops. The intent of this action is to reduce the number of unknown sharks in the shark dealer reports; therefore shark dealers or their proxy are required to attend the workshop. To the extent practicable, the Agency will notify law enforcement officials and port agents of workshops in their respective regions and encourage them to attend these workshops to improve their identification skills, especially since port agents are often responsible for the collection of biological information on many species that the Agency manages. Furthermore, law enforcement officials also need to identify sharks to the species level to enforce regulations related to seasons, minimum sizes, bag limits, and trip limits. Port agents and law enforcement officials are required to attend rigorous training on the identification of HMS regulated species; however, the material that will be covered in these workshops might provide additional information on morphological characteristics to facilitate shark identification in various conditions at landing (i.e., no fins, no head, several days since landing, and gutted). Because port agents and law enforcement do receive some identification training and are not directly involved with reporting shark landings, the Atlantic shark identification workshops are only mandatory for shark dealers at this time.

Comment 19: It is very difficult to sell ''unknown'' sharks in the market and sharks are being listed as unclassified because it is the path of least resistance when they are reporting.

Response: Landings data from 2004 indicate that the number of unclassified large coastal, small coastal, and pelagic shark landings was 19 percent, 0.3 percent, and 53 percent of total shark landings. These percentages indicate that a significant number of sharks enter the market as unclassified, despite regulations that require species-specific reporting by vessel owners and dealers. NMFS does not know if sharks are being listed as unclassified because fishermen and dealers are unable to identify them, to circumvent restrictions, or because it is the most expeditious manner to process the catch as the commenter suggests. However, NMFS believes that mandatory Atlantic shark identification workshops will improve the ability of shark dealers to identify sharks to the species level. NMFS anticipates that these workshops will improve the data collected to assess stock status and decision making processes for formulating appropriate fishery management strategies.

Comment 20: NMFS received comments on the workshop materials and the need to hold shark identification workshops. These comments include: NMFS will need pictures of all the shark species to teach proper identification. Those pictures will need to include pictures of dressed fish, whole fish, and fins of each species, especially prohibited species; and, NMFS should consider enlisting members of the industry to help with these workshops.

Response: NMFS would coordinate with local shark dealers to have some dressed sharks available for each workshop. If the workshops are held after a closure or in an area where no carcasses are available, NMFS would use other tools, such as photo presentations and dichotomous keys, to present methods for identifying dressed sharks to the species level. The Agency intends to use a combination of dressed sharks, fins, photo presentations, and dichotomous keys to improve species-specific shark carcass identification. The success of the Atlantic shark identification workshops will depend upon cooperation between the Agency and the industry.

Comment 21: Please consider Houma as a location to conduct the shark dealer workshops, if selected.

Response: NMFS would not be able to hold workshops at every shark dealer facility; however, the Agency examined the number and location of shark dealers in each region, and would work to provide workshops in areas that are convenient to the greatest number of people. A preliminary evaluation of dealers in the southern Louisiana region shows that Houma proportionally does not land the most sharks in the region, but is central to other locations. As suggested, the Agency will consider Houma as a potential site for an Atlantic shark identification workshop.

Comment 22: NMFS received several comments on allowing a proxy to attend the Atlantic shark identification workshops for the shark dealers. Those comments are: NMFS should allow a purchase agent proxy to attend instead of the shark dealer permit owner; NMFS needs to consider all of the truck drivers operating under the single NMFS shark dealer permit who purchase sharks products from satellite locations; if a shark dealer loses his proxy due to unforeseen circumstances, NMFS should have some flexibility on allowing the fishhouse to continue operating until a replacement is found and certified; a trained and certified dealer representative must be present at all times whenever HMS catches are offloaded to be responsible for ensuring that all HMS landings are monitored and properly documented; dealers should be allowed more than one proxy if requested; ''Dockside Technicians'' should be allowed as a proxy for the fish dealer who may not be present during vessel pack-outs; the DEIS/proposed rule has some good ideas for proxies, but NMFS will need to be careful about a lapse between proxies, should the individual leave the business; and, there must be a fast track way to get certified if a proxy leaves, such as online certification.

Response: Under this final rule, all federally permitted shark dealers will be required to obtain an Atlantic shark identification workshop certification. NMFS encourages shark dealers to send as many proxies as necessary to train staff members responsible for shark species identification within the dealer's business. Federally permitted shark dealers will be responsible for ensuring that the appropriate individuals receive the proper training in shark identification. Federally permitted shark dealers will be encouraged to share the workshop information and training with individuals that were unable to attend the workshop. Multiple proxies for each federally permitted shark dealer will better ensure that every dealer has at least one person on staff who possesses workshop certification and the skills necessary to properly identify sharks if another proxy's employment is terminated. The schedule for Atlantic shark identification workshops will be available in advance to allow dealers and proxies to select the workshop closest to them and most convenient to their schedule. If a dealer or proxy is not able to attend a scheduled workshop, NMFS will consider one-on-one training at the expense of the individual. These one-on-one training sessions could also accommodate the replacement of a proxy whose employment was terminated on short notice.

iii. Other Workshop Related Comments

Comment 23: NMFS received several comments on outreach beyond the two workshops. These comments included: regardless of who is required to attend the workshops, the Agency should do at-sea identification; a field guide should be sent out to all HMS permit holders; NMFS should provide

waterproof field identification materials; manuals should be developed on the proper billfish and tuna release handling procedures; and, HMS Identification Guide should be required on board permitted vessels and in the office of HMS permitted fish dealers. The Guide could also be made available online.

Response: The HMS website (*http://www.nmfs.noaa.gov/sfa/hms/*) currently provides a variety of information on several HMS and protected species, including a tutorial on sea turtle identification and handling, and a link to purchase the waterproof HMS identification guide from Rhode Island Sea Grant, as well as the safe handling and release protocols and placards in three different languages (English, Spanish, and Vietnamese). Curriculum for the Atlantic shark identification workshops is in development. However, current plans include distributing waterproof identification materials at the protected species workshops, as well as distributing and training participants to use a key for distinguishing species-specific features at Atlantic shark identification workshops. NMFS recommends that these materials be readily accessible in dealer offices and onboard fishing vessels, and encourages workshop participants to share knowledge gained with their crew and other employees. While NMFS would like to distribute the HMS guide to all HMS permit holders, the resources to do so are not currently available.

Comment 24: NMFS received several comments about providing an expedited means for receiving the training, certification, and renewal. Those comments include: there should be internet training and certification; can HMS identification workshops and renewals occur online?; certification over the internet might not suffice, however, recertification might be possible; to facilitate normal turnover, review and busy schedules, NMFS could conduct training via the internet and/or by mail; NMFS needs to provide a convenient way for new captains to be certified prior to their first trip; initial certification for new vessel operators must be conveniently available, such as a self-course over the internet or overnight mail; vessel operations should not be held up unnecessarily; NMFS needs to make sure to develop a streamlined approach to keeping this certification effort simple and convenient so as to not to be a burden to all folks participating; hands-on training is important; and, the first time going through the training must occur in the workshop.

Response: The Agency's priority is to make the workshops as successful and effective as possible. Due to the nature of workshop subject matter, hands-on training and interaction with the workshop leader is vital for initial skill development and certification for the protected species safe handling, release, and identification workshops, as well as the Atlantic shark identification workshops. Once the first round of certifications are complete, NMFS will explore alternative means for renewing permits, including online or mail-in options. The Agency also hopes to develop an online program that will provide up-to-date information regarding HMS identification and protected species handling techniques.

To facilitate coordination between workshops and regular business activities, NMFS plans to do a focused mailing to permit holders to ensure that the workshop times and locations are known in advance. This will allow workshop participants to plan workshop attendance accordingly and prevent lapses in fishing activities.

Comment 25: How did NMFS analyze the economic impacts of attending these workshops?

Response: NMFS conducted an opportunity cost analysis to determine the economic costs associated with attending the various workshop alternatives. This analysis used economic information obtained from the HMS logbook, specifically the economic costs section that is required to be completed by selected vessels. For vessels that completed the economic costs section of the HMS logbook in 2004, revenues per trip were estimated by taking the number of fish caught per trip, multiplying the number of fish by average weights for each species harvested, and multiplying the total weights for each species by average prices for each species as reported in the dealer landings system. The costs reported for each trip were then subtracted from the estimated revenue for each trip. Then the number of days at sea as reported in logbooks was used to determine the average net revenue per day at sea for each trip taken. Finally, the information provided on crew shares was used to allocate the net revenue per day at sea to owner, captain, and crew. Information from the HMS permits database was then used to estimate the potential number of participants in each of the workshop alternatives. Since information on the number of captains per permitted vessel was not available, NMFS conservatively estimated that there could be two captains per permit for PLL vessels and one captain for all others. Net revenues per day for owners, captains, and crew were then multiplied by the number of participants expected for each workshop alternative to estimate the opportunity cost for a one day workshop. The economic impacts (i.e., out of pocket cash costs) associated with attending workshops is likely to be less than the economic opportunity costs estimated since NMFS plans on scheduling workshops on less productive fishing days to avoid lost time at sea.

Comment 26: If training and certification is mandated, it is essential that NMFS ensure that adequate funding and personnel resources are dedicated to develop and fully support all program facets.

Response: The Agency agrees and is fully aware of the ramifications of these workshops and the need to implement them successfully. Numerous individuals, with a variety of expertise and backgrounds have been involved in the implementation of the voluntary workshops to date, and will be involved in any future mandatory workshops, including: shark identification and biology, fishing gear technology and deployment, safe release and handling of protected resources, vessel permitting, fisheries law enforcement, and shark carcass identification.

Comment 27: NMFS should consider how to ensure compliance with this requirement and should have a plan to measure the effectiveness of the workshops.

Response: Successful completion of both workshops will be linked to the renewal of the owner's or dealer's HMS permits. Longline and gillnet vessel owners must be certified in the safe release and disentanglement protocols before they can renew their limited access permits. Additionally, longline and gillnet vessels may not engage in fishing operations without a certified operator onboard, as well as proof of owner and operator certification. Similarly, Federal shark dealers must be certified in shark identification, or have a certified employee, to renew their dealer permit. NMFS will gauge the success of these requirements by monitoring compliance with the sea turtle release and disentanglement performance standards established in the 2004 BiOp, as well as by monitoring the number of unclassified sharks reported by Federal dealers.

Comment 28: NMFS received comments suggesting that the Agency provide the workshop materials in other languages, such as Spanish and Vietnamese, as well as English.

Response: NMFS acknowledges the diversity of HMS fishery participants, and will make workshop materials

accessible to as many of its constituents as possible. While the workshops will be conducted in English, NMFS hopes to provide workshop materials in other languages for distribution at and outside of the workshops. Placards of sea turtle handling and release guidelines are currently available in English, Spanish, and Vietnamese. To the extent practicable, the Agency will work to develop shark identification materials in these languages as well.

Comment 29: NMFS received several comments related to alternative A17, Compliance with and Understanding of HMS Regulations. Those comments include: compliance and increased understanding of HMS regulations could be addressed by mailing an updated HMS Compliance Guide to each HMS recreational and commercial permit holder each year; workshops on the regulations are unnecessary as long as brochures are available; the proposed workshops should cover new regulatory requirements, such as the new PLL TRT regulations; there are no alternatives in the Draft Consolidated HMS FMP for workshops on HMS regulations. The GMFMC recommends that an interactive web-based tutorial be available to improve the understanding and compliance with HMS regulations. This training should be mandatory for commercial captains; and, NMFS should consider mandatory recreational compliance workshops because commercial vessels adhere to many U.S. regulations but less emphasis is placed upon recreational compliance.

Response: During scoping, NMFS explored an alternative that focused on enhancing compliance with, and understanding of, HMS regulations using Agency sponsored workshops. NMFS received comments noting that mandatory workshops need to be prioritized due to the time and cost to those who must attend. Furthermore, comments were received in support of continuing the current methods of disseminating information pertaining to HMS regulations (e.g., Annual HMS Compliance Guide) rather than spending Federal dollars to conduct workshops on the regulations at this time. Advisory Panel members supported focusing on mandatory requirements (e.g., workshops required under BiOps and other mandates) first, and then following up with additional outreach materials to meet regulatory informational needs. NMFS already disseminates this type of information and, because this information can be distributed to participants attending NMFS sponsored workshops, this alternative was not further analyzed in the Consolidated HMS FMP. Compliance guides and brochures can be obtained from the HMS website (*http://www.nmfs.noaa.gov/sfa/hms/*).

Under this final rule, NMFS requires owners and operators to attend mandatory protected species safe handling, release, and identification workshops. Furthermore, shark dealers (or their designated proxy(ies)) must attend Atlantic shark identification workshops. In doing so, NMFS may consider the use of web-based training as a suitable media for disseminating training information following an initial workshop.

B. Time/Area Closures

i. New Closures

Comment 1: Alternative B2(a) indicates that there would be ecological benefits to leatherback sea turtles and blue and white marlin, yet this alternative was given cursory treatment.

Response: NMFS comprehensively analyzed the ecological and economic impacts of all alternatives, including alternative B2(a), in the Draft and Final Consolidated HMS FMPs, consistent with the analytical requirements of NEPA, the Magnuson-Stevens Act, ATCA, and other laws. In the Draft Consolidated HMS FMP, NMFS investigated potential changes in bycatch and discards with and without the redistribution of fishing effort for all the time/area closure alternatives considered. For alternative B2(a), NMFS evaluated a total of three scenarios of redistributed effort (as well as a fourth scenario without redistribution of effort), each of which had different assumptions regarding how fishing effort would be redistributed into open areas. The first scenario assumed that fishing effort (i.e., hooks) from alternative B2(a) would be displaced into all open areas. The second scenario assumed all fishing effort would only be redistributed within the Gulf of Mexico. The third scenario assumed that fishing effort would be displaced within the Gulf of Mexico and into an area (i.e., Area 6) where the majority of vessels with Gulf of Mexico homeports have been reported fishing during 2001 - 2004.

All three of these scenarios predicted that bycatch and discards would increase for at least one of the species considered. For instance, under the first scenario, NMFS predicted an increase in loggerhead sea turtle interactions (7.9 percent or 14 turtles/over three years; annual numbers may be obtained by dividing by three), bluefin tuna (BFT) discards (10.3 percent or 166 discards/over three years), swordfish discards (4.4 percent or 1,635 discards/over three years), yellowfin discards (3.0 percent or 166 discards/over three years), and bigeye tuna discards (11.6 percent or 117 discards/over three years). Under the second scenario of redistributed effort (effort only redistributed in the Gulf of Mexico), NMFS predicted increases in sailfish discards (1.8 percent or 18 discards/over three years), spearfish discards (3.3 percent or 14 discards/over three years), pelagic shark discards (0.3 percent or 112 discards/over three years), large coastal shark discards (3.6 percent or 598 discards/over three years), swordfish discards (4.4 percent or 1,635 discards/over three years), yellowfin discards (22.3 percent or 1,224 discards/over three years), bigeye tuna discards (0.4 percent or 4 discards/over three years), and BAYS tuna discards (1.0 percent or 91 discards/over three years). Finally, under the third scenario (redistribution in the Gulf of Mexico and Area 6), NMFS predicted increases in sailfish (4.7 percent or 61 discards/over three years), pelagic sharks (4.4 percent or 834 discards/over three years), BFT discards (1.6 percent or 35 discards/over three years), and BAYS tuna discards (0.7 percent or 70 discards/over three years). Given the potential negative ecological impact of B2(a) under all three redistribution of effort scenarios, NMFS is not implementing alternative B2(a) at this time.

Comment 2: NMFS decided against any new closures to protect sea turtles, billfish, and other overexploited species at this time because there is no closure that will benefit all species. Closures should not be rejected because they do not ''solve'' the bycatch problem on their own. Rather, they should be coupled with other sensible measures to ensure that all species are receiving the protection they need to recover and maintain healthy populations.

Response: NMFS agrees that closures can be combined with other measures to achieve management objectives. However, NMFS did not reject closures because there was not a closure that benefited all species. To the contrary, NMFS is not preferring the closures because, in part, there were indications that the closures could actually result in an increase in bycatch to the detriment of some species with the consideration of redistributed effort. Additionally, NMFS does not prefer implementing new closures at this time, other than the Madison-Swanson and Steamboat Lumps Marine Reserves, for a number of other reasons, including those discussed below in this response. All of the data used in the time/area analyses were based on J-hook data. The Northeast Distant experiment suggested that circle

hooks likely have a significantly different catch rate than J-hooks; further investigations are required to determine the potential impact of any new time/area closures. The final logbook data recently became available. NMFS is beginning to analyze that data. NMFS also continues to monitor and analyze the effect of circle hooks on catch rates and bycatch reduction as well as assess the cumulative affect of current time/area closures and circle hooks. NMFS does not prefer to implement new closures until the effect of current management measures, and potential unanticipated consequences of those management measures, can be better understood. Second, NMFS is awaiting additional information regarding the status of the pelagic longline (PLL) fleet after the devastating hurricanes in the Gulf of Mexico during the fall of 2005. A majority of the PLL fleet was thought to be severely damaged or destroyed during the 2005 hurricane season. The amount of PLL fishing effort, especially within the Gulf of Mexico, will be assessed in the summer of 2006 when data quality control procedures on the 2005 HMS logbook data are complete. Until NMFS can better estimate the current fishing effort and potential recovery of the PLL fleet, it is premature to implement any new time/area closures. Third, a number of stock assessments will be conducted during 2006 (LCS, blue marlin, white marlin, north and south swordfish, eastern and western BFT, and large coastal sharks). NMFS is waiting on the results of these stock assessments to help determine domestic measures with regard to management of these species. Once NMFS has this updated information, NMFS will consider additional management measures, potentially for all gear types, to help reduce bycatch and discard rates. NMFS is also trying to assess how protecting one age class at the potential detriment of other age classes will affect the fish stock as a whole. For instance, how will protecting spawning BFT help rebuild the stock if it results in increased discards of non-spawning adults, juvenile, and sub-adult BFT along the eastern seaboard? More information is needed to further understand how to manage this species given its complex migratory patterns, life history, and age structure. NMFS is also considering developing incentives that would dissuade fishermen from keeping incidentally caught BFT, particularly spawning BFT, in the Gulf of Mexico. This may involve research on how changes in fishing practices may help reduce bycatch of non-target species as well as the tracking of discards (dead and alive) by all gear types. In addition, sea surface temperatures in the Gulf of Mexico have recently been thought to be associated with congregations of BFT and putative BFT spawning grounds in the Gulf of Mexico (Block, pers. comm.). NMFS intends to investigate the variability associated with sea surface temperatures as well as the temporal and spatial consistency of the association of BFT with these temperature regimes. By better understanding what influences the distribution and timing of BFT in the Gulf of Mexico, NMFS can work on developing tailored management measures over space and time to maximize ecological benefits while minimizing economic impacts to the extent practicable.

Comment 3: NMFS received several comments regarding additional closures to consider including: NMFS should consider a time/area closure for longlining from the 35th parallel to the 41st parallel, from the 30 fathom line to the 500 fathom line, from June 15 to September 30; NMFS should consider longline closures around San Juan, Puerto Rico and other areas around Puerto Rico; NMFS should pressure the states north of the North Carolina closed area to close their state waters during April through July 31 to protect juvenile sandbar sharks; since the sandbar shark HAPC includes a major U.S. nursery area for this species, NMFS should close the Federal waters out to 10 fathoms from April to July 31 each year; NMFS should reevaluate its decision not to close the Northeast Central statistical area proposed as Alternative A14 in the June 2004 SEIS; and, Georgia CRD requests either the closure of the EEZ off Georgia to gillnet gear to facilitate state enforcement and management efforts or the requirement for shark gillnet vessels to carry VMS year-round to facilitate Georgia's cooperative state/Federal enforcement efforts.

Response: While additional areas could be considered for time/area closures, NMFS considered a range of different closures that encompassed the major areas of bycatch for the greatest number of species of concern. Due to the number of bycatch concerns regarding the pelagic longline fishery and the availability of data, most of the analyses for potential closures focused on the pelagic longline fishery. Although some alternatives, such as preferred alternative B4, affect additional HMS fisheries such as the recreational fishery. The majority of the areas were initially selected by plotting and examining the HMS logbook and Pelagic Observer Program (POP) data from 2001 - 2003 to identify areas and times where bycatch was concentrated. When identifying areas to consider, NMFS also took into account information received in a petition for rulemaking to consider an additional closure (alternative B2(c)) to reduce BFT discards in a reported spawning area in the Gulf of Mexico (Blue Ocean Institute et al., 2005; Block et al., 2005), and a settlement agreement relating to white marlin, which was approved by the court in *Center for Biological Diversity* v. *NMFS*, Civ. Action No. 04–0063 (D.D.C.). Using the preferred alternative B5, NMFS may consider additional closures, including closures for juvenile sandbar sharks and closures for other gear types, including gillnets and/or recreational gear, in future rulemakings, as needed.

Comment 4: NMFS received several comments in favor of maintaining existing time/area closures. These comments included: time/area closures should be used to promote conservation of all HMS species; marine sanctuaries need to be established for all species of fish; these areas need to remain closed until the fishery is rebuilt to the 1960s levels that existed prior to the overcapitalization of this fishery; as a result of the existing closures, overall discards have declined by as much as 50 percent so NMFS should continue to expand the existing closures; the reductions in bycatch as a result of the existing closures benefit a wide range of species; current closed areas are effective, based upon recent increases in swordfish size and weight in the deep-water recreational swordfish fishery; and suggestions by the industry that the closed area goals have been met because swordfish are rebuilt ignore the broader purpose and benefit of the closures.

Response: NMFS agrees that the existing closures have effectively reduced the bycatch of protected species and non-target HMS, and have provided positive ecological benefits. NMFS prefers to keep the existing closures in place at this time. For example, the overall number of reported discards of swordfish, BFT, and bigeye tunas, pelagic sharks, blue and white marlin, sailfish, and spearfish have all declined by more than 30 percent. The reported discards of blue and white marlin declined by about 50 percent, and sailfish discards declined by almost 75 percent. The reported number of sea turtles caught and released declined by almost 28 percent. However, these analyses are based on J-hook data, and the fishery is required to use circle hooks. It is possible that the impact of such closures since implementation of circle hooks may be greater in ecological benefits than expected. If this happens,

NMFS may not need to implement new closures and may be able to reduce existing closures. NMFS currently only has final, quality controlled HMS logbook data on the catch associated with circle hooks from July through December of 2004. NMFS anticipates having final, quality controlled 2005 HMS logbook data in the summer of 2006. At that time, NMFS will examine and analyze the effect of circle hooks on catch rates and bycatch reduction. Any changes to the existing closures would occur through a proposed and final rulemaking using the criteria in the preferred alternative B5.

Comment 5: NMFS received a number of comments in opposition to closures including: the effectiveness of time/area closures as a management tool to address bycatch issues has been exhausted; bycatch measures other than time/area closures should be considered; closures are not conservation, but reallocation to prohibit one hook and line gear (especially, circle hook gear) while allowing another hook and line gear (especially, more harmful J-style hook gear and live baiting); these areas were closed to rebuild the now fully rebuilt swordfish stock; an alternative to a full area closure could be to conduct an experimental fishery to test gear modifications - if the modifications do not work then put in a full closure; and the pelagic longline industry cannot withstand additional time/area closures.

Response: NMFS does not believe that the effectiveness of time/area closures as a management tool has been exhausted. The existing closures have effectively reduced the bycatch of protected species and many non-target HMS, and have provided positive ecological benefits. For example, the overall number of reported discards of swordfish, BFT and bigeye tunas, pelagic sharks, blue and white marlin, sailfish, and spearfish have all declined by more than 30 percent. The reported discards of blue and white marlin declined by about 50 percent, and sailfish discards declined by almost 75 percent. The reported number of sea turtles caught and released declined by almost 28 percent. Thus, the current time/area closures have had positive ecological impact by reducing the overall bycatch of non-target and protected species. However, NMFS recognizes that the current closures have had an impact on retained species' landings as well. For example, from 1997 to 2003, the number of swordfish kept declined by nearly 28 percent, the number of yellowfin tuna kept declined by 23.5 percent, and the total number of BAYS kept (including yellowfin tuna) declined by 25.1 percent. Such declines in landings have resulted in negative economic impacts for the fleet and may explain the overall decline in effort by the Atlantic PLL fishery from the pre- to post-closure period. Thus, while time/area closures play an important part in resource management, NMFS does not prefer to implement new closures, except for the Madison-Swanson and Steamboat Lumps Marine Reserves, until NMFS can assess the cumulative effect of the current time/area closures and circle hooks. In addition, NMFS is waiting for additional information regarding the status of the PLL fleet after the devastating hurricanes in the Gulf of Mexico during the fall of 2005. A portion of the PLL fleet was thought to be severely damaged or destroyed during the 2005 hurricane season. Until NMFS can better estimate the current fishing effort and potential recovery of the PLL fleet, NMFS believes that it is premature to implement any new time/area closures, particularly on the PLL fleet.

ii. BFT/Gulf of Mexico

Comment 6: NMFS received comments regarding time/area closures to protect BFT spawning areas in the Gulf of Mexico (Alternatives B2(c) and B2(d)). Some of these comments suggested NMFS should consider different months or permutations of months between January and August. Other comments included: NMFS should implement additional measures to protect the Atlantic BFT biomass, especially spawning fish in the Gulf of Mexico; NMFS should consider closing the Gulf of Mexico to protect spawning BFT and analyze different time periods in combination with the northeast closures during months of high discards or high CPUE that might address effects on loggerhead sea turtles; an area south of Louisiana surrounding known BFT spawning areas should be closed to all longline fishing for a reasonable period of time — at a minimum this should include the area identified in Alternative B2(c); the study in the journal ''Nature'' firmly establishes the time and location of the spawning season and affords NMFS the opportunity to close a hot spot based on the best available science; Japan has recommended a longline closure of the entire Gulf of Mexico at ICCAT; NMFS should immediately initiate interim or emergency action to close the longline fishery in the Gulf of Mexico, starting in January of 2006 that would be effective for six months each year from January through June; NMFS should explain why the ecological benefits of closing the longline fishery in the Gulf of Mexico during BFT spawning season, as described in Alternative B2(c), would be minimal; why does NMFS assume that a longline closure in the Gulf of Mexico would cause a redistribution of effort to areas where BFT discards could increase; and, what are the positive and negative economic consequences of allowing longline fishing to continue in the Gulf of Mexico during BFT spawning season?

Response: NMFS considered a wide range of alternatives ranging from maintaining existing closures (No Action) to a complete prohibition of PLL gear in all areas in order to reduce the bycatch and bycatch mortality of non-target HMS and protected species, such as sea turtles, in Atlantic HMS fisheries. After comparing the potential bycatch reduction for all of the closures that NMFS initially considered (see Chapter 2 of the FEIS for a description of alternatives), NMFS chose five closures with the highest overall bycatch for further analysis. Alternative B2(c), closing 101,670 nm^2 in the Gulf of Mexico from April through June, was chosen for analysis in response to a petition received by NMFS from several conservation organizations requesting consideration of a closure of the ''Gulf of Mexico BFT spawning area'' (Blue Ocean Institute et al., 2005). The times and areas analyzed for alternative B2(c) were directly from the petition. Alternative B2(d) was chosen for analysis in order to determine if any other closure, or combination of closures, would be more effective at reducing bycatch than some of the other alternatives considered. The analyses indicated that almost all of the closures and combinations of closures considered for white marlin, BFT, or sea turtles would result in a net increase in bycatch for at least some of the primary species considered when redistribution of fishing effort was taken into account. In addition, the predicted reduction in bycatch when redistribution of fishing effort was taken into account was typically less than 30 percent for any given species with overall reduction in the number of individual species being very low.

According to Pelagic Observer Program (POP) data, without redistribution of effort, alternative B2(c) would reduce discards of all non-target HMS and protected resources from a minimum of 2.3 percent for spearfish to a maximum of 25.0 percent for other sea turtles (comprised of green, hawksbill, and Kemp's ridley sea turtles). Without redistribution of effort, the logbook data indicate that alternative B2(c) would potentially reduce discards of all of the species being considered from a

minimum of 0.8 percent for pelagic sharks to a maximum 21.5 percent for BFT. With redistribution of effort, however, bycatch was predicted to increase for all species except leatherback and other sea turtles. Even BFT discards, which showed a fairly dramatic decline without redistribution of effort, were predicted to increase by 9.8 percent with redistribution of effort. Alternative B2(d) would prohibit the use of PLL gear by all U.S. flagged-vessels permitted to fish for HMS in a 162,181 nm^2 area in the Gulf of Mexico west of 86 degrees W. long. year-round, thus eliminating an area where approximately 50 percent of all effort (Atlantic, Gulf of Mexico, and Caribbean) and 90 percent of all effort in the Gulf of Mexico has been reported in recent years (2001 - 2003). Without the redistribution of effort, the closure could have resulted in large reductions in all non-target HMS, ranging from a 10.1 percent reduction in loggerheads to 83.5 percent reduction in spearfish discards. With the redistribution of effort, NMFS predicted a decrease in discards of blue marlin (20.3 percent or 497 discards/over three years; annual estimates can be obtained by dividing by three), sailfish (26.8 percent or 276 discards/over three years), and spearfish (73.3 percent or 276 discards/over three years). However, given the size and timing of this closure (i.e., year-round), NMFS also predicted an increase in white marlin discards (0.3 percent or 10 discards/over three years), loggerhead sea turtle interactions (65.5 percent or 117 turtles/over three years), BFT discards (38 percent or 614 discards/over three years), swordfish discards (31.9 percent or 11,718 discards/over three years), and bigeye tuna discards (84.8 percent or 853 discards/over three years).

Other alternatives, such as alternative B2(b), which would close a much smaller area in the Northeastern United States, could have greater benefits in terms of the number of BFT discards reduced. Although alternative B2(b) is not considered a BFT spawning area, data from the POP program indicate that large fish (>171 cm TL) are present in the area. Additionally, there is evidence to indicate that the area is utilized as a feeding and staging area by BFT prior to migrating to the Gulf of Mexico to spawn (Block et al., 2005). Hence, while NMFS recognizes that the same proportion of western spawning BFT would not be protected from a closure in the Northeast as one in the Gulf of Mexico, potentially a small proportion of western spawning-size BFT could be protected by a closure like B2(b), especially given the prevalence of larger individuals in Northeast area from the POP data. Therefore, a closure like B2(b) may be able to protect a few spawning-size individuals as well as pre-spawners, or sub-adults, which are also valuable age classes with regard to the stock (although, presumably, there is a mixture of eastern and western origin fish in this area, and a closure in this area may protect sub-adults of western as well as eastern origin). Furthermore, the total proportion of dead discards in the Northeast was similar to the Gulf of Mexico. In the Northeast, 48 percent (219 out of 461) of all BFT discards from 2001 - 2003 were discarded dead, whereas 53 percent (249 out of 470) of all BFT discards from the Gulf of Mexico were discarded dead. Given the high number of BFT discards in the Northeast, a smaller closure there may provide similar ecological benefit compared with a closure in the Gulf of Mexico (depending on post-release survival rates in the two areas), and would minimize the economic impacts on the fleet.

NMFS will continue to pursue alternatives to reduce bycatch of spawning BFT. NMFS has adopted all of the ICCAT recommendations regarding BFT, a rebuilding plan is in place domestically for this species, and NMFS has implemented measures to rebuild this overfished stock. NMFS is currently trying to assess how protecting one age class at the potential detriment of other age classes will affect the fish stock as a whole. For instance, how will protecting spawning BFT help rebuild the stock if it results in increased discards of non-spawning adults, juveniles, and sub-adult BFT along the eastern seaboard? Therefore, more information is needed to further understand how to manage this species given its complex migratory patterns, life history, and age structure. As described above in Comment 2, NMFS is also considering developing incentives that would dissuade fishermen from keeping incidentally caught BFT, particularly spawning BFT in the Gulf of Mexico.

Comment 7: NMFS received several comments regarding the biology of spawning BFT in the Gulf of Mexico. These comments included: the management measures currently in place do not protect spawning BFT or create the conditions necessary for BFT to survive, reproduce, and increase their population; under current U.S. regulations, almost half the BFT landed by longline fishermen come from the Gulf of Mexico when spawning fish are present which results in a significant de facto directed fishery; warm water in the Gulf of Mexico poses particular risks to BFT captured on longline gear due to the physiological stress caused in warm, low oxygen waters; and the spawning fish in this time and place are more valuable to the population than at other times of year.

Response: Although NMFS does not prefer alternative B2(c), or any other closure specific to spawning BFT in the Gulf of Mexico at this time, NMFS plans to pursue alternatives to reduce bycatch in the Gulf of Mexico, especially for spawning BFT. Such actions could improve international rebuilding efforts of this species. NMFS is also considering developing incentives that would dissuade fishermen from keeping incidentally caught BFT, particularly spawning BFT, in the Gulf of Mexico. This may involve research on how changes in fishing practices may help reduce bycatch of non-target species as well as the tracking of discards (dead and alive) by all gear types. In addition, sea surface temperatures in the Gulf of Mexico have recently been thought to be associated with congregations of BFT and putative BFT spawning grounds in the Gulf of Mexico (Block, pers. comm.). NMFS intends to compare sea surface temperature data and logbook and/or observer data in order to investigate the variability associated with sea surface temperatures as well as the temporal and spatial consistency of the association of BFT with these temperatures regimes. For this investigation, NMFS will use existing data and will likely work with scientists to collect additional data and/or conduct experiments, as needed. By better understanding what influences the distribution of BFT in the Gulf of Mexico, NMFS can tailor management measures over space and time to maximize ecological benefits while minimizing economic impacts, to the extent practicable.

Comment 8: NMFS should outline the methods and mortality rates used to estimate dead discards as reported to ICCAT, and comment on the likely associated uncertainty. The current regulations are failing to implement key provisions of the ICCAT rebuilding plan, in violation of ATCA. The model used by NMFS in its Draft Consolidated HMS FMP assumes that the reproductive value of western Atlantic BFT in the Atlantic Ocean off the northeastern United States later in the year is equivalent to that of BFT from March-June in the Gulf of Mexico. This is a faulty and risky assumption. Does the analysis in the Draft Consolidated HMS FMP take into account the current low stock status of western Atlantic BFT? The Draft Consolidated HMS FMP

is flawed when it does not prefer closing BFT spawning grounds because it erroneously analyzes the closure primarily with regard to minimizing bycatch to the extent practicable. In fact, the primary legal duty falls under the need to rebuild the western Atlantic BFT population in as short a period of time as possible. Overfishing continues at high rates and the model used for the rebuilding program is unrealistically optimistic.

Response: The estimates of discards used in the analyses include both live and dead discards, as reported by fishermen in logbooks. While NMFS ultimately used logbook data for the time/area analyses, NMFS also compared estimates of discards from the POP data. As described in the responses to comments 31 and 32 of this section, NMFS did not develop mortality estimates from the data. Rather, NMFS evaluated percent change in total discards as the measure of the effectiveness of potential time/area closures. NMFS disagrees that the current regulations are failing to implement provisions of the rebuilding plan. NMFS has adopted all of the ICCAT recommendations regarding BFT, a rebuilding plan is in place domestically for this species, and NMFS has implemented measures to rebuild this overfished stock. For the PLL fishery, fishermen are not allowed to target any BFT regardless of the size of the BFT. Thus, the model used by NMFS to calculate discards in the PLL fishery did not make any assumptions about the reproductive value of BFT caught in the PLL fishery. Rather, the intent of examining different closures was to maximize the potential reduction in bycatch of the PLL fishery for the greatest number of species, while minimizing losses in target catch in the PLL fishery.

Comment 9: NMFS received a comment that the area in the ''Nature'' journal study extends beyond the U.S. EEZ and so should the time/area closure considered in the Draft Consolidated HMS FMP. There is no legal reason to limit the closure to the U.S. EEZ.

Response: While NMFS has analyzed closures beyond the U.S. EEZ (e.g., the Northeast Distant closed area) in the past, except for two relatively small areas, the U.S. EEZ in the Gulf of Mexico abuts the Mexican EEZ. U.S. fishermen are not allowed to fish in the Mexican EEZ, and NMFS does not have the legal authority to regulate foreign fisheries that operate outside of the U.S. EEZ. As such, the analyses in the Final HMS FMP were limited to the U.S. EEZ in the Gulf of Mexico utilizing logbook and POP data from the U.S. PLL fishery. Data that includes fishing effort in other countries EEZs would be included in any analyses conducted by ICCAT, as needed.

Comment 10: Demographics in the Gulf of Mexico have changed due to last summer's hurricanes. No one knows what the impacts of that will be. NMFS should not rush into changes in the Gulf of Mexico that are not necessary.

Response: NMFS is aware that there have been significant impacts in the Gulf of Mexico as a result of the 2005 hurricanes, which may take time to be fully realized. After carefully reviewing the results of all the different time/area closures analyses, and in consideration of the many significant factors that have recently affected the domestic PLL fleet, NMFS does not prefer to implement any new closures, except the complementary measures in the Madison-Swanson and Steamboat Lumps closed areas at this time. As described above in the response to Comment 2 in this section, this decision is based on a number of reasons including the potential impacts of the hurricanes on the PLL fleet.

iii. White Marlin

Comment 11: NMFS received several comments in support of additional time/area closures to protect white marlin. Comments included: NMFS should consider a closure for white marlin in the mid-Atlantic; NMFS has never implemented a time/area closure for PLL fishing specifically to reduce blue and white marlin, or sailfish bycatch even though exceedingly high levels of bycatch occur; and NMFS must reduce marlin bycatch by closing areas to longline fishing when and where the most bycatch continues to occur to avoid a white marlin ESA listing.

Response: While NMFS has never implemented a closure to specifically reduce bycatch of blue and white marlin, current closures (the Northeastern U.S. closure, the DeSoto Canyon closure, the Charleston Bump, the East Florida Coast closures, and the Northeast Distant closed area) have resulted in large decreases in blue and white marlin discards from PLL gear, and billfish were considered in the analyses of these closures. Percent change in discards from the HMS logbook data before (1997 - 1999) versus after (2001 - 2003) the closures that were implemented showed an overall 47.5 percent decrease in white marlin discards and an overall 50.3 percent decrease in blue marlin discards. In addition, NMFS banned live bait in the Gulf of Mexico for PLL vessels to help reduce billfish bycatch on August 1, 2000 (65 FR 47214). In the Draft Consolidated HMS FMP, NMFS considered areas specifically for white marlin, per a settlement agreement relating to white marlin (*Center for Biological Diversity* v. *NMFS*, Civ. Action No. 04–0063 (D.D.C.)). Based on the HMS logbook and POP data from 2001 - 2003, potential time/area closures, other than the areas outlined in the settlement agreement, were predicted to result in larger ecological benefits for all of the species considered, including white marlin. Ultimately, NMFS chose to further analyze time/area closure boundaries that included the areas of highest interactions for a number of species. However, based on the results of these analyses and for the reasons discussed under the response to Comment 2, NMFS chose not to implement any new closures at this time beside the complementary measures in the Madison-Swanson and Steamboat Lumps Marine Reserves.

Comment 12: NMFS received a number of comments on alternative B2(c) including: Alternative B2(c) corresponds to the location of significant incidental catches of white marlin and leatherback sea turtles, so NMFS should consider that area for closures, effort restrictions, or stricter gear requirements rather than be paralyzed in the search for a single time/area closure that will address all bycatch reduction needs for more than a dozen species; NMFS should consider closed areas in the western Gulf of Mexico because that is where marlin are being killed; Alternative B2(c) should be closed from June through August to protect the greatest abundance of billfish in the Gulf of Mexico; the Draft Consolidated HMS FMP does not propose a closure big enough or long enough to meaningfully reduce billfish bycatch; U.S. and Japanese data show that the bycatch of billfish is higher in the Gulf of Mexico than in any other part of the commercial fishery, and the closures to protect blue and white marlin in the Gulf of Mexico could save more of these species than any other closure in the entire United States, yet NMFS did not consider that there would be enough positive impact to consider implementing a closure.

Response: As described above in Comment 6 of this section, NMFS examined alternative B2(c) specifically in response to a petition for rulemaking regarding protection of spawning BFT. Under the full redistribution of fishing effort model for B2(c) (fishing effort distributed to all open areas), NMFS predicted an increase in white marlin discards (7.0 percent or 221 discards/over three years; annual estimates can

be found by dividing by three), blue marlin discards (2.0 percent or 50 discards/over three years), sailfish discards (4.4 percent or 45 discards/over three years), loggerhead sea turtle interactions (23.5 percent or 42 turtles/over three years), BFT discards (9.8 percent or 158 discards/over three years), swordfish discards (6.0 percent or 2,218 discards/over three years), and bigeye tuna discards (1.7 percent or 18 discards/over three years). Under the second scenario of redistributed effort (redistribution in the Gulf of Mexico and Area 6), NMFS predicted increases in blue marlin discards (0.7 percent or 20 discards/over three years), sailfish discards (21.7 percent or 283 discards/over three years), spearfish discards (2.0 percent or 10 discards/over three years), large coastal sharks (12.8 percent or 2,454 discards/over three years), swordfish tuna discards (5.0 percent or 2,109 discards/over three years), and bigeye tuna discards (0.6 percent or 7 discards/over three years). Although white marlin discards were predicted to decrease under the second scenario evaluated (by 2.6 percent or 98 discards/over three years), there were potential negative ecological impacts of B2(c) for other species considered under the different scenarios of redistributed effort. Therefore, NMFS does not prefer alternative B2(c) at this time.

Based on a submission by the Japanese at ICCAT on BFT management (Suzuki and Takeuchi, 2005), the proposed closures and subsequent ecological benefits were based on closing the entire Gulf of Mexico and did not consider redistribution of fishing effort. As described above in Comment 9 of this section, NMFS has no jurisdiction to close the Mexican EEZ, and U.S. PLL vessels are prohibited from fishing in the Mexican EEZ. NMFS also believes it is critical to consider the redistribution of fishing effort before implementing management measures, such as time/area closures, because potential increases in discards and bycatch can result from time/area closures as effort is moved to remaining open areas. Additionally, as described above in the response to Comment 3 and elsewhere in this document, NMFS is considering future management measures to minimize bycatch of non-target HMS in the Gulf of Mexico.

Comment 13: Longlining should be banned off the East Coast from June to September when white marlin are present in this area.

Response: NMFS currently has several closures along the eastern seaboard specifically for pelagic and bottom longline. These consist of the Northeastern United States closed area, which is closed to pelagic longlining during the month of June; the mid-Atlantic Shark Closure, which is closed from January through July to bottom longline gear; the Charleston Bump closed area that is closed to PLL gear from February through April; and the East Florida Coast closure that is closed year-round to PLL gear. The Florida East Coast (FEC), the Mid-Atlantic Bight (MAB), and the Northeastern Coastal (NEC) statistical reporting areas cover the extent of the U.S. Atlantic PLL logbook reporting areas along the East Coast. Comparing the number of discards for the months of July through December between the pre-closure period 1997 - 1999 and the period 2001 - 2003, when closures were in effect, reported landings of white marlin decreased by 95.4 percent in the FEC, 53.4 percent in the MAB, and 77.8 percent in the NEC. Therefore, while NMFS has not implemented a closure for white marlin specifically along the East Coast, data show a substantial decrease in white marlin discards likely resulting from the current time/area closures along the eastern seaboard.

iv. Current Closed Areas

Comment 14: NMFS received several comments regarding the East Florida Coast closed area. These comments are: NMFS should prohibit all commercial fishing for swordfish in the East Florida Coast closed area; NMFS should eliminate all commercial shark fishing in the East Florida Coast closed area; NMFS should impose a 20–mile limit for the entire East Florida Coast that would prohibit commercial fishing in the area; NMFS should set a policy for the East Florida Coast closed area that allows for recreational swordfish hook and line fishing for a three to four month period or adopt management measures that allow for recreational swordfish hook and line fishing only on an every other year basis; NMFS needs to protect the Florida east coast because it is a nursery area for juvenile swordfish; NMFS should re-adjust the offshore border of the East Florida Coast Closed Area to allow PLL vessels a reasonable opportunity to harvest its ICCAT quotas; and, NMFS should reopen the offshore border because the inshore and Straits of Florida portions that will remain closed afford adequate ongoing protection for undersized swordfish and other bycatch.

Response: NMFS closed the East Florida Coast closed area to PLL gear effective in 2001 (August 1, 2000, 65 FR 47214) in order to reduce bycatch of HMS and other species by PLL gear. One reason NMFS closed that area was because it is a swordfish nursery area and many of the swordfish being caught by PLL fishermen were undersized and therefore discarded dead. However, the goal of the closures was to reduce bycatch in general in the PLL fishery, and analyses conducted for that rulemaking also indicated that closing the area to PLL gear would reduce bycatch and discards of other species as well. The closure was not intended to be for all commercial fishing or to be permanent. Nor was the closure meant to allow only recreational fishing in that area. Because the area is a swordfish nursery area, it is likely that any fishing gear in that area, particularly those fishing for swordfish, will catch undersized swordfish that must be discarded, as well as juvenile swordfish that meet the legal minimum size. The criteria in this final rule will allow NMFS to consider closing the East Florida Coast to other gears to reduce bycatch or for other reasons, or to modify the closed area to PLL gear to either expand or reduce it, as needed. NMFS considered modifications to the closed area to allow PLL fishermen into an area that they claimed had swordfish larger than the minimum size. The analyses for this rulemaking concluded that swordfish in the potential re-opened area are significantly larger than those in the remaining closed area; however, the analyses also indicated potential increases in marlin bycatch. For this reason and others, NMFS is not modifying the East Florida Coast closed area at this time. NMFS may consider changes to that area or to the gears allowed to fish in that area in future rulemakings.

v. Modifications to Current Closed Areas

Comment 15: NMFS received comments supporting and opposing modifications of the existing HMS time/area closures to allow additional fishing effort into these areas. Comments in support of modifying the existing closures include: the existing time/area closures to protect small swordfish are no longer needed and should be reduced in size and/or duration or eliminated all together; NMFS inaction to adjust the offshore closure borders prevents U.S. fishermen from having a reasonable opportunity to harvest its ICCAT quota share, contrary to ATCA and the Magnuson-Stevens Act; NMFS needs to re-examine the area closures and provide immediate modifications to at least some areas. Other areas may require a period of heightened monitoring to determine the effects of new circle hook gear and careful handling/release procedures; NMFS should continuously monitor whether

the existing closed areas are having the desired effect to determine whether modifications can occur; NMFS should reevaluate the PLL gear time/area closures for their necessity and effectiveness and redevelop these closures to include prohibiting all HMS hook and line fishing if the biological justification warrants retaining any such closures; NMFS should consider modifying the offshore borders of existing closures in several areas where the deeper depth contours provide relatively clean directed fishing; NMFS should have considered modifying the Desoto Canyon; opening the area offshore of the 250 fathom curve in the Desoto Canyon could benefit YFT fishermen; and if NMFS allows vessels into closed zones by using Vessel Monitoring Systems (VMS), then VMS should also be used to implement and enforce additional new closures that follow oceanic bottom contour lines. Comments opposed to modifying the existing HMS closures include: NMFS should not rely on old logbook data to modify existing closures; the existing closures should not be modified; NMFS should not consider areas that may serve as nursery areas for North Atlantic swordfish; NMFS should not consider opening the DeSoto Canyon areas to longlining because this would adversely affect the health of the fisheries ecologically and would prove detrimental to the economic interests of the commercial fleet; and, the figures in this section show longline sets after the 2000 closure of the Desoto Canyon and the harvest of BFT dead discards, which is illegal, so how do individuals make these sets and record them in the logbook?

Response: NMFS considered modifications to the current time/area closures, including modifications to the DeSoto Canyon, and is continuously monitoring the effectiveness of the current closures. As described above in the response to Comments 4 and 5 and elsewhere in this document, an analysis of pre-closure and post-closure data indicate that the existing closures have effectively reduced the bycatch of protected species and non-target HMS, and provided other positive ecological benefits. The analysis also indicated that none of the modifications would have increased the retained catch enough to alleviate concerns about portions of the swordfish quota remaining uncaught. Specifically for the DeSoto Canyon, NMFS considered modifying the existing DeSoto Canyon time/area closure boundary to allow PLL gear in areas seaward of the 2000 meter contour from 26° N lat., 85°00′ W long., to 29° N lat., 88°00′ W long. (alternative B3(d)). However, the average swordfish size was significantly smaller in the area to be reopened (average size = 108 cm LJFL) compared to the area to remain closed (average size = 116 cm LJFL; P = 0.03). Both average swordfish sizes are smaller than the minimum size limit of 119 cm LJFL. Therefore, NMFS believes that modifying the Desoto Canyon closure could increase swordfish discards. In addition, new circle hook management measures were put into place in 2004, and NMFS is still assessing the effects of circle hooks on bycatch rates for HMS. Until NMFS can better evaluate the effect of circle hooks on bycatch reduction, especially with regards to protected species interaction rates, the Agency is not modifying the current time/area closures. Furthermore, as described in the response to Comment 14 above, the current time/area closures were established to reduce bycatch of more than just swordfish. Nonetheless, if the upcoming ICCAT swordfish stock assessment indicates the species is rebuilt, NMFS may reconsider modifying the existing closures taking into consideration things such as the impact of circle hooks and protected species interaction rates. Finally, while VMS can provide NMFS with information that allows a vessel to transit a closed area, closed areas with boundaries that track oceanic contour lines would often be too irregularly shaped to be easily enforced despite the use of VMS. Geometric coordinates greatly aid in enforcement of time/area closures.

The baseline that NMFS has used to calculate bycatch reduction associated with current time/area closures is the U.S. Atlantic HMS logbook data just prior to the implementation of the closures (1997 - 1999). NMFS feels this best reflects the status of the stocks at the time of the closures and more current data is not available because PLL gear has been prohibited in these areas since 2000 or 2001, depending on the closure. The figures referred to by the commenter (Figures 4.3 and 4.8 in the Draft Consolidated HMS FMP) incorrectly showed all of the 1997 - 1999 reported sets rather than the intended 2001 - 2003 reported sets. The figures have been corrected. Very few, if any, sets have been reported in the Desoto Canyon since 2000. The figures in the Final Consolidated HMS FMP only show where BFT discards occurred for PLL vessels from 2001 through 2003. NMFS also implemented the use of a vessel monitoring system (VMS) for all PLL vessels on September 1, 2003 (68 FR 45169). With this monitoring system, NMFS has been able to determine if PLL vessels are placing sets in closed areas. VMS has helped alert enforcement of illegal activities occurring in closed areas under real time conditions, which has led to prosecution for illegal fishing in closed areas.

Comment 16: We support a modification of the area described in alternative B3(a) (modifications to the Charleston Bump closed area). While the analysis shows a negligible amount of bycatch, there is an opportunity for catching marketable species for boats that are struggling and need access to this area; we support a modification of the area described in alternative B3(b) (modifications to the Northeastern U.S. closed area) because this area should never have been closed in the first place; the entire June BFT closure area should be reevaluated in light of all the mandatory bycatch reduction measures and the inability to harvest the U.S. BFT quota in recent years.

Response: NMFS analyzed both alternatives B3(a) and B3(b). The analyses indicate that alternative B3(a) would increase swordfish catch by 1.1 percent and yellowfin tuna catch by 0.16 percent. However, it could increase the bycatch of sailfish (3.0 percent), spearfish (2.4 percent), and white marlin (2.0 percent). Alternative B3(b) would cause a minimal increase in bycatch, with only a minimal increase in retained catch based on 1997 - 1999 data (i.e., 3 swordfish, 1 BFT, and 1 BAYS tuna (numbers of fish)). Therefore, NMFS is not implementing alternatives B3(a) and B3(b) because neither alternative would increase retained catches enough to alleviate concerns over uncaught portions of the swordfish and BFT quotas. As described in the response to Comment 2, NMFS is not implementing any new closures, except for the Madison-Swanson and Steamboat Lumps, or modifying any existing closures. NMFS may consider changes to the current time/area closures in a future rulemaking depending upon the results of the circle hook analyses, the 2006 ICCAT stock assessments (BFT, swordfish, and billfish), protected species interaction rates, and the other criteria described in this final rule.

vi. Madison-Swanson/Steamboat Lumps

Comment 17: NMFS received contrasting comments regarding preferred alternative B4 (implement complementary HMS management measure in Madison-Swanson and Steamboat Lumps Marine Reserves) including: I support preferred alternative B4 and the maintenance of

the existing closures; the Agency appears to be acting positively on the Gulf of Mexico Fishery Management Council's request for complementary closures; I support this alternative even though this will have virtually no significant impact on HMS fisheries because the area is so small; I support alternative B4 because it will make enforcement easier; we support alternative B4 with the following edit, ''Maintain existing time/area closures and implement complementary November through April (6 months) — Preferred Alternative''; and we do not support complementary closures with Madison-Swanson and Steamboat Lumps - the PLL industry has had to withstand numerous stringent measures in recent years and cannot withstand any additional closures.

Response: NMFS is implementing alternative B4, complementary HMS management measures for the Madison-Swanson and Steamboat Lumps Marine Reserves, at the recommendation of the Gulf of Mexico Fishery Management Council. These closures were designed primarily to protect spawning aggregations of gag grouper and other Gulf reef species. Similar management measures are already in effect for holders of southeast regional permits. The complementary HMS management measures would close any potential loopholes by extending the closure regulations to all other vessels that could potentially fish in the areas and/or catch gag grouper and other reef fish as bycatch (e.g., HMS bottom longline vessels). As a result, this action is expected to improve the enforcement of the Madison-Swanson and Steamboat Lumps Marine Reserves. Only minor impacts on HMS fisheries, including the PLL fishery, are anticipated because the marine reserves are relatively small, and little HMS fishing effort has been reported in these areas. The suggested edit to the title of this alternative is appreciated, but is not necessary because the existing closures will remain in effect by default, absent additional action to remove or modify them.

vii. Criteria/Threshold/Baseline

Comment 18: NMFS received several comments on using the criteria on current closures including: NMFS should have created these criteria when establishing the closed area off NC - NMFS then could have modified the economic impacts to the NC directed shark fishermen by having flexibility to reduce the time and area of the current closed area; and all existing closed areas should be immediately re-evaluated in terms of the new criteria.

Response: NMFS used many of the criteria when establishing the current time/area closures. NMFS is implementing the criteria to clarify the decision-making process and to inform constituents about what NMFS would consider before implementing new time/area closures or modifying current time/areas closures. In addition, in this rulemaking, NMFS evaluated the impacts of most of the current time/area closures in the No Action alternative, B1, and the impacts of modifying four current time/area closures. Thus, NMFS has already re-evaluated some of the current time/area closures using the criteria. Once the criteria are implemented, NMFS would continue using them in future rulemakings. The only time/area closure that was not re-evaluated during this rulemaking was the mid-Atlantic shark closure off North Carolina. NMFS did not re-evaluate this closure because, as described in the response to a petition for rulemaking from the State of North Carolina (October 21, 2005; 70 FR 61286), the closure became effective in January 2005, and NMFS did not have any additional information on which to reevaluate the conclusions of the rulemaking that established the closure (December 24, 2003; 68 FR 74746). However, when NMFS established the mid-Atlantic shark time/area closure, the Agency considered the social and economic impacts on directed shark fishermen, while also balancing reductions in the catch of juvenile sandbar sharks, the bycatch of prohibited dusky sharks, and the quota throughout the entire large coastal shark fishery. As described in this rulemaking and in previous rulemakings, the primary goals of time/area closures are to maximize the reduction of bycatch of non-target and protected species while minimizing the reduction in the catch of retained species. NMFS believes that the mid-Atlantic shark closure should accomplish these goals even though there may be negative economic impacts as a result of that closure. Once the results of the ongoing LCS and dusky shark stock assessment are finalized, NMFS may consider whether changes to any management measures are appropriate regarding LCS, including dusky sharks, and may reconsider the mid-Atlantic closed area in a future rulemaking using the criteria being implemented in this final rule.

Comment 19: NMFS received several comments regarding research and closed areas including: NMFS should support additional research to determine where other closed areas should be placed; NMFS should collect data for use in establishing such criteria in open areas to the maximum extent possible; and there must be overwhelming reason to pay fishermen to use illegal gear in a closed area in the name of research (while still being able to sell their catch) when such studies could just as easily be performed in vast areas of the oceans where it is legal to fish in that manner.

Response: NMFS supports research to determine how changes in fishing gear and/or fishing practices can reduce bycatch. Research in closed areas to test how changes in fishing gear and/or fishing practices may reduce bycatch is particularly important. Due to the spatial and temporal variability of HMS and the species that HMS interact with, the results of experiments in open areas may not always be applicable to closed areas. Oftentimes, these areas are ''hot spots'' and were closed because they are areas with high congregations of HMS or other species. These congregations usually occur along bathymetric contour lines or areas where currents interact. In order to scientifically test if a certain change in the gear would result in a significant reduction in bycatch, scientists may need to work in areas where there is a high degree of certainty that the gear will interact with the bycatch species. Testing for bycatch reduction in areas where there is little to no bycatch would likely require more monetary resources, fishermen, and time, compared with areas that are considered ''hot spots.'' Scientists often conduct preliminary tests in open areas to ensure that the changes in gear or fishing methods being considered could work, but they may need access to closed areas at some point to make certain that the expected results are actually realized. Otherwise, NMFS might reopen a previously closed area in light of technological advances in bycatch reduction but not see the expected reduction in bycatch rates, or potentially see an increase in bycatch rates.

Comment 20: NMFS received comments regarding the specific criteria that NMFS should consider when examining potential area closures including: the criteria should include the status of the stock in each area under consideration; the criteria should include bycatch baselines, targets, reduction timetables, and consider impacts on all HMS, with an emphasis on overfished species; what percent reduction in discards is required to implement a time/area closure, and on what basis is this threshold determined? What is the threshold that the Agency is trying to achieve? There are no standards; was a target bycatch reduction level identified; the Agency

should quantitatively use an optimization model to combine areas to achieve the optimum benefit; these criteria should be developed in a workshop including managers, scientists, and stakeholders to ensure their success; the discussion of how specific criteria would be developed, reviewed, and authorized is vague; overall the criteria seem to restrict NMFS' use of discretion in using closed areas as part of a comprehensive strategy to reduce bycatch and ensure sustainable ecosystems; and NMFS should preserve the availability of the greatest range of options to address its fisheries management, protected resources, and marine ecosystem conservation responsibilities.

Response: NMFS already considers the status of the stocks when implementing time/area closures. Closed areas like the Northeastern United States closed area, the mid-Atlantic shark closed area, and the Northeast Distant closed area were all implemented to address specific overfished or protected species. The other closed areas, which were implemented to reduce bycatch in general, also considered the status of the stocks before implementation.

Establishing pre-determined thresholds or target reduction goals for specific species, as requested in this comment, is not appropriate because it does not consider the impact on the remaining portion of the catch. Consideration of the overall catch is critical when implementing a multispecies or ecosystem-based approach to management. Furthermore, while the Magnuson-Stevens Act provides NMFS with the authority to manage all species, NMFS must balance the impacts of management measures on all managed species. National Standard 1, which requires NMFS to prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery for the United States fishing industry, clearly applies to all species and all fisheries. Similarly, National Standard 9, which requires NMFS to minimize bycatch and bycatch mortality to the extent practicable, applies to all species and fisheries. By choosing not to implement specific thresholds or a decision matrix, NMFS retains the flexibility to balance the needs of all the species encountered with the fishery as a whole. If NMFS must manage a fishery to achieve a specific goal (e.g., a jeopardy conclusion regarding the PLL fishery and leatherback sea turtles), this flexibility allows NMFS to close certain areas or take other actions to achieve that goal while also protecting, to the extent practicable, the other species and the rest of the fishery. Without this flexibility, NMFS might potentially have to implement more restrictive measures to protect one species causing potential cascade effects (e.g., closing one area may increase the bycatch of another species, which could result in closing another area, etc.).

This flexible approach also provides NMFS with the ability to re-examine the need for existing closures and modify them appropriately based on the analyses rather than the attainment of a specific goal (e.g., NMFS would not have to wait for 30 percent reduction in bycatch to be met; it could open the closure at 25 percent, depending on the result of reducing bycatch of other species or other considerations, as appropriate). The present criteria do not preclude NMFS from establishing a decision matrix in the future if it could provide the flexibility necessary to consider all of the species involved. This may be more appropriate when NMFS has a longer temporal dataset on the simultaneous effect of circle hooks and the current time/closures. At this time, NMFS believes that the criteria contained in the preferred alternative B5 would provide the guidance needed, consistent with the Magnuson-Stevens Act and this FMP, to help NMFS make the appropriate decisions regarding the use of time/area closures in HMS fisheries. NMFS developed the criteria to help make the overall process of implementing and/or modifying current time/area closures more transparent, not more vague. While NMFS did not hold a workshop on these criteria, they were considered by multiple stakeholders during the scoping and public comment period for this rule and subsequently refined, as appropriate.

Comment 21: NMFS received many comments regarding the use of criteria to open or modify closed areas. These comments included: criteria are needed to allow for modifications of the closed areas; I cannot support the preferred alternative B5, area closure framework alternative, because it could allow NMFS to open existing closures; changes to existing closed areas must, at a minimum, be conservation neutral; we need a mechanism to open or modify closed areas; the present closures appear to be larger or different from what is necessary; to go through the entire regulatory process to change or eliminate the closures takes too long and is too costly for both the government and the fishery.

Response: NMFS already has the authority to modify current closed areas once NMFS determines that a closed area has met its original management goal. The existing time/area closures were not meant to be permanent closures. Rather, each closure was implemented with a specific management goal(s) in mind. Once those goals are met, NMFS may decide to modify or remove the time/area closure. Through the implementation of the criteria, and using the appropriate analyses, NMFS would be able to modify the current time/area closures in a more timely and transparent manner. No changes were made to existing time/area closures at this time because such modifications could potentially result in bycatch of non-target HMS and protected resources, such as sea turtles. However, once NMFS better understands the effects of circle hooks, which were implemented fleet-wide in mid–2004, on all species, NMFS may consider modifying the current time/area closures. Such modifications would need to be either conservation neutral or positive.

Comment 22: Since the East Florida Coast, Charleston Bump, and DeSoto Canyon closures went into effect, bycatch and fishing effort has been reduced. Those three closures achieved a greater than predicted reduction in bycatch. NMFS should use the year before the closures went into effect as a baseline to determine what the existing management measures have produced, rather than taking additional actions and expecting the bycatch to continually diminish. NMFS could modify closures and allow increases in bycatch up to the reductions expected as a result of the analyses that closed those areas. This would reduce the economic impacts on fishermen.

Response: NMFS agrees that the current closures reduced the bycatch of most species more than predicted by the analyses in the rulemaking that originally closed the areas. NMFS used data just prior to the implementation of these closures (i.e., logbook data from 1997 - 1999) because the Agency felt this time series best represented the status of the stocks at the time the closures were implemented. NMFS considered modifications to these areas in this rulemaking. However, the current analyses indicated that bycatch of some species, such as marlin and sea turtles, could increase as a result of those modifications. Given the status of marlin and the jeopardy finding on leatherback sea turtles, NMFS believes that increases in the bycatch of those species are not appropriate. Additionally, the analyses in this rulemaking are based on mostly J-hook data, which are no longer in use in the fishery. NMFS will continue to monitor the effectiveness of the closures and

may consider modifications in the future, particularly as the amount of circle hook data increases.

viii. Fleet Mobility/Redistribution of Effort

Comment 23: NMFS received several comments regarding the mobility of the fleet. These comments included: I do not believe that effort will move to the Atlantic Ocean from the Gulf of Mexico; commercial fishermen would rather stay home and fish for other species rather than relocate great distances; longline vessels are tied to communities; given rising fuel prices, an increase in long distance relocation seems unlikely; NMFS states that Vietnamese fishermen are reluctant to fish outside the Gulf of Mexico and uses this statement to conduct a separate analysis specific to the Gulf of Mexico, but NMFS applied the assumption to the analysis of only one alternative in the Gulf of Mexico when it should be applied to all GOM alternatives; how does the 2001 NMFS VMS study support conducting a fleet-wide analysis when the majority of effort is in or adjacent to the homeport fishing area?

Response: To determine fleet mobility, NMFS relied on its analyses described in a 2001 report that NMFS submitted to the U.S. District Court in response to a lawsuit filed by the fishing industry against NMFS for implementing the vessel monitoring system (VMS) requirement. That document indicated that fishermen were as likely to fish in areas away from their homeport as in areas immediately adjacent to their homeport, even without the added pressure of a closure in an area adjacent to their homeport. In addition, NMFS conducted a separate analysis in the Draft Consolidated HMS FMP for alternative B2(a) that limited the redistribution of effort in the Gulf of Mexico. This separate analysis was conducted because the area in alternative B2(a) was the smallest of the three closures considered in the Gulf of Mexico and, therefore, represented the most likely case in which fishermen would remain in the Gulf of Mexico. Because there would still be open areas in the Gulf of Mexico during this period (May through November), fishermen might be more likely to fish in those areas rather than relocate fishing effort to the Atlantic Ocean. NMFS also recognized that Vietnamese fishermen are reluctant to fish outside of the Gulf of Mexico, especially for a small time/area closure. Such limited redistribution of effort was not appropriate for other closures in the Gulf of Mexico because of their larger geographic size and longer temporal duration.

However, NMFS further analyzed fleet mobility in the current rulemaking by examining logbook data from 2001 - 2004 (this included only the first six months of 2004 to include only J-hook data) to determine the amount of vessel movement along the Atlantic coast and into the Gulf of Mexico. The data indicated that vessels moved out of the Gulf of Mexico, and that vessels sometimes fished as far away as the central Atlantic. Similarly, in the Atlantic, some vessels fished in areas far from their homeports, although movement from the Atlantic Ocean into the Gulf of Mexico was minimal. Additionally, there were no physical differences in terms of length or horsepower between vessels that fished inside or outside the Gulf of Mexico. Thus, NMFS concluded that HMS vessels continue to be highly mobile, are capable of fishing in areas distant from their homeports, and that the closure analyses would need to take into account the potential for redistribution of fishing effort, particularly for a potentially large closure such as B2(c) in the Gulf of Mexico. Based on this additional analysis of fleet mobility, NMFS considered different scenarios of redistribution of effort for alternatives B2(a), B2(b), and B2(c). Each scenario made different assumptions regarding where effort would redistribute, based on the current fleet's movement. However, NMFS recognizes that the increased cost of fuel and other supplies may limit the amount of movement by the pelagic longline fleet.

Comment 24: NMFS received comments regarding the redistribution of fishing effort model used to analyze the time/area closure alternatives. Comments included: Does the model assume random distribution to other fishing grounds?; how does the redistribution of effort model result in more bycatch?; how does the redistribution of effort model work with circle hooks?; the model is based on discard rates, which implies some mortality.

Response: NMFS considered a broad range of time/area closure alternatives that estimated potential bycatch with and without redistribution of fishing effort. Considering the impacts of closures with and without redistribution of effort provides NMFS with the potential range of changes in catch that could occur as a result of the closure(s). One end of the range assumes that all fishing effort within a given closed area would be eliminated (i.e., fishermen who fished in the closed area would stop fishing for the duration of the closure). Thus, the number and percent reduction in catch of both non-target and target species in these analyses represents the highest possible expected reduction. This would also represent the greatest negative social and economic impact that is anticipated for the industry. The other end of the spectrum assumes that all fishing effort in a closed area would be distributed to open areas (i.e., fishermen would continue fishing in surrounding open areas, move their businesses closer to open areas, or sell their permits to fishermen closer to open areas).

Rather than random redistribution, the full redistribution model calculates resulting catch of target and non-target species by multiplying the effort that is being redistributed due to the closure by the average CPUE across all remaining open areas for each species. This amount is then subtracted from the estimated reduction inside the closed area (for a complete description of the methodology used for redistribution of effort, please see Appendix A of the Final Consolidated HMS FMP.) This end of the continuum would be expected to provide the least amount of bycatch reduction for a given closure, depending on the CPUE of each species in all remaining open areas. Oftentimes, this model provides mixed results regarding the ecological, economic, and social impacts because HMS and protected species are not uniformly distributed throughout the ocean. Therefore, a closure in one area might reduce the bycatch of one or two species, but may increase the bycatch of others. Bycatch of a particular species increases if that species is more abundant or more frequently caught (i.e., higher CPUE) in areas outside of the closed area. For example, the analyses indicate that a closure in the central Gulf of Mexico could reduce BFT and leatherback sea turtle discards because CPUE for those species is higher in the Gulf of Mexico than along the eastern seaboard. However, such a closure could increase sailfish, spearfish, and large coastal shark discards because the CPUE for those species is higher outside of the Gulf of Mexico. In reality, the actual result is expected to be between the results obtained from these two different considerations of redistributed effort. In addition, NMFS combined dead and live discards in these analyses, so mortality is accounted for in terms of discards. Given the number of species that NMFS had to consider, there was no single closure or combination of closures that resulted in a reduction of bycatch of all species considered. The data analyzed in the Draft Consolidated HMS FMP (2001 - 2003) and additional

analyses in the Final Consolidated HMS FMP (2001 - 2004, including the first six months of 2004 only) did not include circle hook data. The implementation of the circle hook requirement in June 2004 resulted in a change to the baseline. NMFS needs to fully analyze the circle hook data to determine the extent of bycatch reduction and the effects of post-release mortality resulting from this new gear requirement.

Comment 25: How is NMFS going to address the peer review comments that found fault with the effort redistribution model?

Response: Not all of the peer reviewers found fault with the redistribution of effort analysis. For example, one peer reviewer made the following comment:

> The time area closure model is based on generally accepted principles in fisheries science. In general such models rely on a set of assumptions related to static patterns of relative abundance at some temporal and spatial resolution, limited consideration of fish movements, and incomplete understanding of the effects of closure areas on redistribution of fishing effort. Nonetheless, such models can provide useful insights for comparisons of alternative management strategies. This is the approach taken within this draft EIS. Twelve combinations of seasonal and spatial closures are evaluated in Section 4.1.2. Without such a model there would be no pragmatic way of comparing the proposed closed areas. In general it is probably safe to assume that the limitations of the model will be comparable across alternatives. Thus the rankings of each alternative should be relatively insensitive to the assumptions.

However, in response to another peer reviewer's comment that NMFS test assumptions and consider other plausible alternatives to the random effort redistribution model, NMFS evaluated different scenarios that made different assumptions regarding where effort would be redistributed in the Final Consolidated HMS FMP, including redistribution of effort in the Gulf of Mexico only for closures in the Gulf of Mexico, redistribution of effort in the Atlantic only for a closure in the Atlantic, and redistribution of effort in the Gulf of Mexico and the Atlantic for closures in the Gulf of Mexico. These scenarios were based on an analysis of the movement of fishing effort out of the Gulf and into the Atlantic. In order to perform this last analysis, NMFS examined logbooks from 2001 - 2004 and tracked the movement of vessels out of the Gulf of Mexico into different areas of the Atlantic. By examining the movement of effort between the Gulf of Mexico and the Atlantic, NMFS was able to modify the existing full redistribution of effort model and apply different proportions of effort to the average CPUEs of species in the different areas. Using these additional analyses, NMFS could ask different questions about the assumptions of the existing model (e.g., should all fishing effort from a closed area be distributed to all open areas or redistributed only within remaining open areas of the Gulf of Mexico).

Comment 26: The random redistribution of effort model weighs nearby and distant areas equally. This may artificially emphasize distant areas where bycatch rates are higher, and may result in unlikely assumptions about how the effort will shift. This model suggests that Gulf of Mexico vessels are mobile and might fish as far away as Florida but does not suggest that effort is distributed randomly or that significant effort would be displaced to the Northeast. To close or not close an area based on random redistribution of effort is not reasonable. We are concerned about the model given the fact that the data clearly show where concentrations of marlin are caught.

Response: As described above in the response to Comment 24, the method used to calculate redistribution of effort and the resulting catch of target and non-target species is to multiply the effort that is being redistributed by the average catch rate (CPUE) for each species in all remaining open areas, and subtract it from the estimated reduction inside the closed area (for a complete description of the methodology used for redistribution of effort, please see Appendix A of the Final Consolidated HMS FMP.) In some cases, depending upon the average CPUE in open areas, this approach may emphasize distant areas where bycatch rates may be higher. However, in other cases, low bycatch rates in distant areas would not be a factor. For example, a small closure such as B2(a) in the central Gulf of Mexico might result in fishing effort being displaced into areas immediately adjacent to and surrounding the closed area. NMFS tried to take this into account by analyzing redistribution of effort only in the Gulf of Mexico for alternative B2(a). For larger closures in the Gulf of Mexico such as alternative B2(c), NMFS considered redistribution of effort in the Gulf of Mexico and Atlantic based on known movement of fishing vessels and effort into areas of the Atlantic. Finally, for a closure such as B2(b) located in the Atlantic, NMFS considered redistribution of effort in open areas of the Atlantic only. In all cases, NMFS considered the results of both no redistribution of effort and the full redistribution of effort model and assumed that the actual result of the closure would be somewhere between the results of the two scenarios.

Comment 27: NMFS needs a probabilistic model for effort redistribution that considers things such as the history of effort.

Response: NMFS is aware of other models that have investigated redistribution of effort as a result of time/area closures (i.e., random utility models (RUMs) used for the Hawaiian PLL fishery, and a closed area model used by the New England Fishery Management Council (NEFMC) to evaluate closures for the groundfish fishery). These types of models are econometric models, which predict where fishermen will reallocate effort based on maximizing revenues and/or profits. These models were not designed to be used for the current HMS PLL fishery, and in order for either framework to be applicable to a time/area analysis for the Atlantic HMS PLL fishery, NMFS would have to develop a specific model for the PLL fleet based on the current economics, fishing grounds, and fishing effort of the Atlantic HMS PLL fleet. Development of such a model would require considerable additional investment, time, and effort.

At present, NMFS has not developed a probabilistic model that considers the history of effort or other complicating factors (i.e., trip costs, revenues or profits). Prior to developing such a model, NMFS would need to consider the limitations of the Agency, both financially and logistically, to build such a model. For example, despite the fairly straightforward model used in this rulemaking and previous time/area rulemakings to calculate redistribution of fishing effort, many commenters found the procedure confusing or misunderstood the approach and results. This confusion could become even worse if a more complicated model were used. Some models require substantial capital investment for the Agency, years to develop, and years of testing before they can be used. While the model used continues to be the best available science for the PLL fishery at present, NMFS is considering different options to improve the models used to analyze the impacts of time/area closures.

Comment 28: NMFS has applied the redistribution model beyond its usefulness because the model does not describe where the vessels are likely to go. NMFS places an overemphasis on the dangers of redistribution of effort instead of making balanced recommendations based on both the lower and upper estimates of the model.

Response: NMFS disagrees that the redistribution model has been applied beyond its usefulness. It is highly unlikely that NMFS could develop a perfect model that accurately predicts fishing behavior. The redistribution of effort model is useful in providing one end of a range of potential outcomes resulting from new closures. NMFS does not overemphasize the dangers of redistribution of effort, but rather considers it likely that fishing effort may be displaced into open areas and that there may be some increase in bycatch as a result. This is not highly speculative, but rather based on quantitative assessments of fishing effort, bycatch rates, and resulting ecological impacts. For instance, fishing effort in the open areas increased in the Gulf of Mexico after the implementation of the existing closures, which suggests that fishing effort will be displaced to other areas. Furthermore, NMFS does not believe that fishing effort that occurred historically within an area would be completely eliminated with a new closure. As stated above, the model used is the best available science for the PLL fishery; however, NMFS will continue to refine the model to increase its usefulness.

Comment 29: NMFS received comments regarding effort shifts in the Gulf of Mexico including: effort shifts have not occurred in the Gulf of Mexico as predicted for other species; vessels may be offloading in different ports but still in the Gulf of Mexico; and the assumption that vessels would move out of the Gulf of Mexico and catch BFT, particularly spawning western BFT, is unlikely.

Response: While there has been an overall decrease in fishing effort since implementation of the closures in 2000 - 2001, NMFS has seen evidence of an increase in effort in the Gulf of Mexico during 2001 - 2004, possibly as a result of the East Florida Coast closure implemented in 2001, which forced fishermen who originally fished in the east coast of Florida into the Gulf of Mexico. The difference between closures implemented in 2000 and the closures being considered in this FMP is that many of the areas of high bycatch were targeted for closures in 2000 and remain closed today. NMFS is now analyzing an additional series of closures that may not produce the same tangible results that occurred after the first round of closures because bycatch has already been reduced substantially for many species. Analyses indicate that the overall number of reported discards of swordfish, BFT, bigeye tuna, pelagic sharks, blue and white marlin, sailfish, and spearfish have all declined by more than 30 percent since the time/area closures went into effect. Additionally, as the areas open to fishermen become more restricted, fishing effort will tend to become more and more concentrated in smaller and smaller areas where even low bycatch rates may result in increases in bycatch due to the high effort levels. Some of the closures considered in this rulemaking such as alternatives B2(c) and B2(d) would close very large portions of the Gulf of Mexico where approximately 90 percent of the historic fishing effort in the Gulf has occurred. Closing such a large area in the Gulf of Mexico would be unprecedented, and predicting the outcome would likewise be difficult. It should be noted that while the NED closure was just as large as some of the closures proposed in this rulemaking, the closures proposed in this rulemaking are closer to land and more accessible to vessels. However, NMFS disagrees with the comment that vessels would be unlikely to move out of the Gulf of Mexico in response to such an unprecedented large closure. The analyses indicate that fishermen currently homeported in the Gulf of Mexico move out of the Gulf of Mexico into the Atlantic even without the added incentive of a closure. Even in the highly unlikely event that fishermen did not move out of the Gulf of Mexico in response to a closure, the economic impact could force them to sell their permits to fishermen in the Atlantic, thereby increasing fishing effort in those areas. The redistribution of effort analysis in the FMP would take this into account.

Comment 30: NMFS received many comments regarding where effort would be redistributed including: the model fails to consider redistribution of effort from one fishing gear to another (e.g., longline to gillnet); the model inappropriately predicts spatially heterogeneous increases in regional fishing effort and bycatch; NMFS should acknowledge the limitations of the model when selecting the final alternatives and base predictions about redistribution of effort on credible, transparent sources and peer-reviewed literature or on comparisons to the outcomes of previous time/area closures; and NMFS initially argued that there would not be a displacement of effort if closures were implemented, but now is arguing the opposite.

Response: While the redistribution of effort model does not explicitly take into account the potential for fishermen to shift from one gear to another, NMFS has discussed a number of unintended consequences that could result from new closures, including fishermen selling their permits, moving to other areas, and possibly switching gears to target other species. However, given the limited access restrictions of permits for other fisheries, NMFS predicts that it would be difficult for fishermen to switch to a different gear and different fisheries unless they currently possess other permits. NMFS acknowledges the limitations of the redistribution of effort model, and has considered and analyzed other plausible alternatives to the current redistribution scenario. NMFS has considered results from both the redistribution of effort model and a no redistribution of effort model since the first closure for HMS fishermen was implemented in 1999. NMFS has consistently taken both scenarios into account when considering new or additional closures.

ix. Data Concerns

Comment 31: Does the recent article in the journal ''Nature'' regarding BFT spawning, which indicated that discards are being underestimated, affect NMFS assumptions about the benefits (and costs) of the proposed time/area closures? Does NMFS have any data indicating that bycatch rates are significantly lower than those recorded by the scientific observers?

Response: NMFS is aware that discards may be underreported in the HMS logbook data compared to the POP data. However, NMFS examined whether any differences in underreporting between the logbook and observer data for different species emerged between different regions. If underreporting was not different between regions, then the relative effect of each closure on bycatch reduction for each species should be comparable across alternatives.

Cramer (2000) compared dead discards from HMS logbook and observer data. In her paper, Cramer used observer data to estimate dead discards of undersized swordfish, sailfish, white and blue marlin, and pelagic sharks from the PLL fishery operating in the U.S. Atlantic, Caribbean, and Gulf of Mexico. She also provided the ratio of catch estimated from the observer data divided by the reported catch in the HMS logbooks. This ratio indicates the amount of underreporting for different species in a given area. NMFS analyzed these ratios to test whether underreporting varied for different species in different parts of the Atlantic, Caribbean, and Gulf of Mexico. NMFS found no statistical difference in the ratio of estimated catch versus reported catch for undersized swordfish, pelagic sharks, sailfish, or white or blue marlin in the Atlantic, Caribbean, or Gulf of

Mexico. Based on the available information, NMFS found that the underreporting in logbooks compared to observer reports was consistent between areas. Therefore, NMFS believes that, while HMS logbooks may underestimate the amount of bycatch, the use of logbook data rather than observer data should not invalidate or bias the results and that the relative effect of each closure for each species should be comparable across alternatives when using logbook data.

Furthermore, while logbook data appear to underreport bycatch, NMFS has logbook data for each set fished and has observer data for only a limited number of sets fished. In order to use observer data for the analyses, NMFS would have had to extrapolate the catch for all species in all the different areas. This extrapolation process would have added another layer of uncertainty to the model and the results. NMFS believes that while the overall numbers of bycatch and target catch taken would have been larger using the observer data, the use of observer data would have resulted in more uncertainty regarding the relative effect of each closure in terms of predicted changes in bycatch, discards, and retained catch would be the same. Use of the raw logbook data, however, would not introduce the same degree of uncertainty. NMFS will continue to investigate potential differences in reporting between HMS logbook and observer data for all discarded species as well as potential biases in reporting between geographical areas for different species.

Comment 32: NMFS should use the observed sea turtle CPUE by season for each region and multiply it by the amount of effort anticipated to return to that particular area in order to more accurately assess changes to sea turtle bycatch.

Response: NMFS used HMS logbook data for all of the analyses to maintain consistency among the alternatives and species. If NMFS had used the POP data for all species, NMFS would have had to calculate extrapolated takes for all the species considered. This extrapolation would have introduced more assumptions and uncertainty than using HMS logbook data to analyze the potential impacts of time/area closures. As mentioned in the response to Comment 31, NMFS found that HMS logbooks may underestimate the amount of bycatch, however, the relative effect of each closure for each species should be comparable across alternatives. The analyses conducted for this rulemaking (and described in the response to Comment 31) give some indication that the use of HMS logbook data over POP data should not invalidate or bias the results of the time/area analyses because the level of underreporting did not significantly differ between geographic regions and, thus, between closure alternatives. NMFS will continue to investigate potential differences in reporting between HMS logbook and POP data for all discarded species.

Comment 33: How did NMFS conduct the overlap analysis comparing effects of bycatch on BFT, marlin, and sea turtles?

Response: NMFS analyzed the distribution of white marlin, BFT, leatherback and loggerhead sea turtles, as well as a number of other species from the 2001 - 2003 HMS logbook and POP data using GIS. Data for each of the species were mapped and compared spatially to one another in order to select the areas of highest concentration of bycatch. The areas of highest concentrations of bycatch for all species were then selected for further analysis. NMFS provided maps of bycatch for individual species in the Draft Consolidated HMS FMP, and has provided a map showing the overlap of BFT, white marlin, and sea turtles in the Final Consolidated HMS FMP. NMFS combined the bycatch data from the HMS logbook for BFT, white marlin, and sea turtles into one combined dataset, and then joined them to a 10 x 10 minute grid (which is equivalent to approximately 100 nm^2) to get the number of discards for all species combined per 100 nm^2. A color scale is included to show the number of observations per 100 nm^2. The maps show the areas of highest bycatch for the three species combined. Monthly interactions for the different species (i.e., temporal variability) were considered in the redistribution of effort analyses.

Comment 34: NMFS should consider increasing observer coverage throughout the longline fleet to document unintended bycatch.

Response: NMFS's target for PLL observer coverage is 8 percent. This is based on the recommendation from the National Bycatch Report that found coverage of 8 percent would yield statistical analyses of protected resources that would result in coefficient of variance estimates that were below 30 percent.

Comment 35: Available evidence suggests that leatherbacks, loggerheads, and BFT may share similar hot spots in the Gulf of Mexico, thus closures could be beneficial to all species — despite the opposite conclusion in the Draft Consolidated HMS FMP.

Response: Pelagic logbook data also showed areas in the Gulf of Mexico where leatherbacks, loggerheads and BFT have been present. NMFS considered closures in the Gulf of Mexico for white marlin, blue marlin, sailfish, spearfish, leatherback sea turtles, loggerhead sea turtles, other sea turtles, pelagic and large coastal sharks, swordfish, BFT, and BAYS tunas. However, unlike the analyses for the existing closures, NMFS found that no single closure or combination of closures would reduce the bycatch of all species considered, and in certain cases resulted in increases of bycatch for some species with the consideration of redistribution of effort. While the Magnuson-Stevens Act provides NMFS the authority to manage all species, NMFS must balance the mandates of the National Standards when examining various closures. For example, National Standard 9 requires NMFS to minimize bycatch and bycatch mortality to the extent practicable and National Standard 1 requires NMFS to prevent overfishing while achieving on a continuing basis the optimum yield from each fishery for the U.S. fishing industry. Both of these National Standards applies to all species and fisheries. If NMFS were to consider only National Standard 9, NMFS could continue to reduce bycatch of certain species until no fishery exists. However, NMFS also needs to balance the needs of National Standard 1 and ensure that each fishery has the opportunity to catch optimum yield of fish while preventing overfishing. NMFS will continue to look at additional closures and other management measures that reduce bycatch and bycatch mortality and that balance the requirements of all the National Standards and other domestic law, as applicable.

x. Pelagic Longline

Comment 36: NMFS received several comments regarding alternative B7, the prohibition of PLL gear. These comments included: we oppose any rule that would allow the further use or experimentation of such gear, and support alternative B7, which would prohibit the use of PLL gear in HMS fisheries and areas (this alternative would save the fishery if buoy gear was also prohibited); NMFS needs to look at data prior to the introduction of PLL gear in relation to the decline of billfish; and this should be about the gear, not the fishermen, because PLL gear is problematic.

Response: NMFS does not prefer alternative B7 at this time because, while prohibiting the use of PLL gear would eliminate bycatch associated with that gear, it would also eliminate a significant portion of the retained

catch of swordfish and tunas (e.g., in 2004, 97 percent of the swordfish landings from the U.S. Atlantic were from longline gear). Elimination of this retained catch would result in substantial negative social and economic impacts. Under ATCA, the United States cannot implement measures that have the effect of raising or lowering quotas, although NMFS may change the allocation of that quota among different user groups. The swordfish fishery is confined, by regulation, to three gear types: harpoon, longline, and handlines. Under preferred alternative H5, the commercial swordfish fishery would also be authorized to use buoy gear. Since it is unlikely that the handgear sector would be able to catch the quota given the size distribution of the stock, prohibiting longline gear may reduce the ability of U.S. fishermen to harvest the full quota. It may also reduce traditional participation in the swordfish fishery by U.S. vessels relative to the foreign competitors because the United States would harvest a vastly reduced proportion of the overall quota.

In addition, any ecological benefits may be lost if ICCAT reallocates U.S. quota to other countries that may not implement comparable bycatch reduction measures as the United States. The PLL fishery has implemented many management measures to reduce bycatch including circle hook requirements, live bait restrictions in the Gulf of Mexico, prohibition of the targeted catch of billfish and BFT, time/area closures, and safe handling and release protocols for protected resources. These restrictions have been successful. Methods that have been employed and designed by U.S. PLL fishermen, such as circle hooks and safe handling and release protocols for protected resources, are being transferred around the world to reduce bycatch world-wide. Therefore, this alternative could ultimately support the fisheries of other countries that do not implement or research conservation and bycatch reduction measures to the same extent that the United States does. As a result, alternative B7 could have the unintended effect of increasing the bycatch of undersized or non-target species and protected resources in the Atlantic Ocean.

Comment 37: NMFS needs to consider the adverse economic impact of existing time/area closures on the commercial longline fishery especially because the PLL fleet has been reduced to approximately 88 vessels due to existing restrictions; the current high cost of fuel is severely impacting the PLL fleet, and recent hurricanes may have further reduced the fleet.

Response: NMFS evaluated the effect of current time/area closures on the PLL fleet in the No Action alternative, B1. While the closures have had a positive impact on bycatch, they have also had a negative impact on retained species landings. For example, from 1997 to 2003, the number of retained swordfish declined by nearly 28 percent, the number of retained yellowfin tuna declined by 23.5 percent, and the total number of retained BAYS tunas declined by 25.1 percent. Overall effort in the Atlantic PLL fishery, based on the reported number of hooks set, declined by 15 percent from the pre-closure period to the post-closure period. One reason for this decline may be that fishermen left the fishery as a result of the time/area closures. In addition, other factors such as hurricanes and fuel prices have negatively impacted the PLL fishery. This is one reason why NMFS does not prefer any new time/area closures, except for Madison-Swanson and Steamboat Lumps, at this time. Rather, NMFS will continue to estimate current fishing effort and the potential recovery of the PLL fleet, while also considering protected species and other takes.

Comment 38: Why is NMFS considering additional closures for the PLL fishery when analyses indicate that the original goals of the closures have been met or exceeded; NMFS does not react this way for the BFT fishery because it protects spawning or pre-adult swordfish, exceeding the ICCAT standards, yet promotes full utilization of the BFT angling quota; NMFS must realize that the PLL fishery is not always the highest contributor to mortality, and that other fisheries continue to hide behind their lack of data; NMFS should show recreational data and analyze closures for other gears; the issue is fishing mortality, regardless of where it comes from; NMFS must consider all forms of fishing mortality including post release mortality from catch and release fishing.

Response: As part of its annual review process, NMFS evaluates the effectiveness of existing time/area closures. Analysis of the change in effort and bycatch after implementation of existing closures indicates that bycatch may have been reduced more than predicted with redistribution of effort, and in some cases, without redistribution of effort. There are several possible explanations for the higher than predicted decline in bycatch and effort resulting from time/area closures that may have ecological impacts as well as economic repercussions on fishing behavior and the PLL fishing industry: (1) stocks may be declining; (2) time/area closures may have acted synergistically with declining stocks to produce greater declines in catch than predicted; (3) fishermen may have left the fishery; and (4) fishing effort may have been displaced into areas with lower CPUEs. With regard to the last point, the redistribution of effort model is incapable of making predictions based on a declining CPUE. Instead, the model assumes a current CPUE that remains constant in the remaining open areas when estimating reductions. NMFS also considered modifications to the existing closures, in alternatives B3(a) and B3(b), to provide additional opportunities to harvest legal-sized swordfish but not increase bycatch. NMFS, however, does not prefer any modifications to the current closures for the reasons discussed in the response to Comment 15. NMFS agrees that all sources of fishing mortality should be considered in evaluating new and existing management measures. For this reason, circle hooks would be required with natural baits in all billfish tournaments (preferred alternative, E3). Estimated mortality contributions of the domestic PLL and recreational sectors toward Atlantic white marlin can be seen in Appendix C of the Consolidated HMS FMP. NMFS will consider additional information on post release mortality as it becomes available.

Comment 39: NMFS must consider safety. Overly restrictive closed areas force small vessels to stretch beyond their offshore capabilities.

Response: NMFS agrees that safety concerns should be considered when developing any new management measures, consistent with National Standard 10. After carefully reviewing the results of all the different time/areas closures analyses, and in consideration of the many significant factors that have recently affected the domestic PLL fleet, NMFS, at this time, does not prefer any new closures, except the complementary measures in the Madison-Swanson and Steamboat Lumps Marine Reserves. This decision is based primarily upon the analyses indicating that no single closure or combination of closures would reduce the bycatch of all species considered (see the response to Comment 39 of this section). Furthermore, the economic impacts of each of the alternatives may be substantial, ranging in losses of up to several million dollars annually, depending upon the alternative, and displacement of a significant number of fishing vessels.

xi. Bottom Longline

Comment 40: We support the prohibition of bottom longline gear in the southwest of Key West to protect smalltooth sawfish (alternative B6). This alternative can provide a head-start in reducing sawfish bycatch during the lengthy process of review and implementation of the Smalltooth Sawfish Recovery Plan (SSRP). NMFS should coordinate closely with the Panama City Laboratory and Mote Marine Laboratory to ensure full funding of their proposed research into sawfish critical habitat and act promptly on their recommendations regarding additional time/area closures for the species.

Response: The alternative to close an area off of Key West relied upon a limited amount of Commercial Shark Fishery Observer Program (CSFOP) data, thus making it difficult to determine whether the area being considered would result in overall reduction in interactions, or whether sawfish exhibit a higher degree of mobility, and are as likely to be caught in other areas. Recent information indicates that additional sawfish interactions have occurred outside the proposed area, thus necessitating further review of the most appropriate location for a potential closure. In addition, the Smalltooth Sawfish Recovery team is currently in the process of identifying sawfish critical habitat, which may be helpful in determining an appropriate closure area in the future. NMFS supports this and other efforts to further delineate critical habitat for this endangered species.

Comment 41: NMFS received several comments regarding the bottom longline closed area off North Carolina including: NMFS should comprehensively examine and assess the effectiveness of closures and have the confidence that alterations would not reduce protection for dusky and sandbar sharks; I recommend removing the NC BLL closure and re-analyzing the impacts in the same manner as was done for this document. Displacement was not considered for that closure; and NMFS should change the NC closed area to only be closed out to 15 fathoms maximum depth, and change the time to begin on April 1 and continue until July 31 of each year. These changes protect juvenile sandbar sharks, keep protections in place for the peak ''pupping season,'' and balance the needs of the directed shark fishermen whose economic livelihood has been hurt by the Amendment 1 measures.

Response: The bottom longline closed area off North Carolina was implemented in Amendment 1 to the FMP in December 2003, and became effective on January 1, 2005. The time/area closure has now been in place for two complete management periods from January 1 to July 31, 2005, and January 1 to July 31, 2006. The final 2005 logbook data recently became available. NMFS is beginning to evaluate the impacts of the first period of this closure. NMFS is considering additional new information, such as the results of LCS stock assessment and the dusky shark stock assessments, to determine whether changes to the time/area closure, and all shark management measures in general, are appropriate. As a result of the new stock assessments, long-term changes to the time/area closure will be considered in an upcoming amendment to the FMP. However, given the large overharvest in the South Atlantic region in the first trimester of 2006, NMFS is considering short-term changes to the mid-Atlantic shark closure in 2007. NMFS also continues to monitor changes to shark regulations by coastal states and to work with the Atlantic States Marine Fisheries Commission (ASMFC) to develop an interstate shark plan, which may warrant additional review of existing Federal regulations and consideration of further changes to the time/area closure.

NMFS considered redistribution of fishing effort for the time/area closure off North Carolina in Amendment 1. The redistribution of fishing effort analysis indicated that, despite an increase in fishing effort outside the time/area closure, the closure would reduce the overall catch of juvenile sandbar and dusky sharks. The analysis showed that the number of juvenile sandbar and prohibited dusky sharks outside the time/area closure was low compared to the number being caught inside the time/area closure.

xii. Hook Types

Comment 42: NMFS received several comments regarding hook types and time/area closures, including: the time/area closure analyses are based on J-hook data, which the Agency has admitted is obsolete; the time/area closure analyses do not take into account new CPUE or PRM rates based on circle hooks; the impact of the area closures will be larger than predicted because the PLL industry is already using circle hooks; all of NMFS analyses are based on J-hook data and a much larger fleet. Bycatch and bycatch mortality will be further reduced due to the exclusive use of circle hooks in the PLL fishery; NMFS should consider banning all J-hooks and live bait fishing in all areas that are currently closed to PLL fishing.

Response: NMFS used the best scientific information available to analyze the various time/area closure alternatives. Circle hooks were not required in the PLL fishery until July 2004, and all of the data used in the time/area analyses were based upon J-hook data. The evaluation of the effects of circle hooks is discussed in the response to Comment 2 above. An important component of the rationale supporting the Agency's decision not to prefer new time/area closures (notwithstanding Madison-Swanson and Steamboat Lumps) is based upon absence of information regarding the effects of circle hooks on bycatch rates in the PLL fishery.

Similarly, there is an absence of information to analyze the effects of a ban on all J-hooks and live bait fishing in areas that are currently closed to PLL fishing. Some available studies document the effects of circle hooks on certain species (i.e., white marlin), and NMFS prefers specific, targeted hook requirements to reduce bycatch mortality in these fisheries. However, the effect of circle hooks on other HMS species (i.e., swordfish and sharks) and fisheries is largely unknown. As additional information becomes available, NMFS will assess the need to require circle hooks, or to prohibit live bait, in other HMS fisheries in areas that are closed to PLL fishing.

xiii. General Time/Area Comments

Comment 43: NMFS chose to combine some of the closures in the analyses. How were those areas chosen?

Response: NMFS analyzed the combination of areas that had the highest bycatch of certain species in the Gulf of Mexico and the Atlantic to maximize potential bycatch reduction, and to take into account high bycatch for the same species in different areas as described in response to Comment 33. For example, there is high bycatch for BFT in both the Gulf of Mexico and in areas of the Northeast. By combining these two areas, NMFS took into account the fact that, if effort were redistributed, it would not be redistributed into the areas of highest bycatch in a different geographic region.

Comment 44: What is the new process for establishing and/or modifying closures?

Response: NMFS is not implementing a new process for establishing or modifying HMS time/area closures. Rather, the Agency is identifying specific criteria to consider for regulatory framework adjustments that could implement new time/area

closures or modify existing time/area closures in the future. NMFS has always considered these criteria, or combinations of them, in establishing or modifying time/area closures. The preferred alternative, however, will provide for greater transparency and predictability in the decision making process by clarifying what the Agency is looking for, or considering, during its analyses. The same criteria will be used both to establish new closures and to modify existing closures. The preferred alternative to establish these criteria will not affect the ability of the public to submit a petition to NMFS for rulemaking if they believe that an existing time/area closure should be modified or a new time/area closure should be established.

Comment 45: The proposed time/area closure alternatives do not achieve the conservation objectives of the FMP.

Response: There are many objectives in the Consolidated HMS FMP. All of these objectives must be balanced and considered in their entirety, within the context of the Magnuson-Stevens Act and other domestic laws, when implementing management measures. Some of the objectives in the FMP are especially relevant to this particular comment. The first objective is to prevent or end overfishing of Atlantic tunas, swordfish, billfish and sharks and adopt the precautionary approach to fishery management. The second objective is to rebuild overfished Atlantic HMS stocks and monitor and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of the stocks and promote Atlantic-wide stock recovery to the level where MSY can be supported on a continuing basis. The third objective is to minimize, to the extent practicable, bycatch of living marine resources and the mortality of such bycatch that cannot be avoided in the fisheries for Atlantic HMS or other species, as well as release mortality in the directed billfish fishery. Finally, another objective that is relevant to this comment indicates that NMFS should minimize, to the extent practicable, adverse social and economic impacts on fishing communities and recreational and commercial activities during the transition from overfished fisheries to healthy ones, consistent with ensuring the achievement of the other objectives of this plan and with all applicable laws. These objectives clearly indicate that the biological impacts on all HMS species must be considered, as well as the bycatch of all other living marine resources. In addition, NMFS must minimize, to the extent practicable, adverse social and economic impacts on fishing communities and fisheries, while remaining consistent with the other FMP objectives. In selecting the preferred time/area closure alternatives, NMFS has accomplished these objectives.

In this rulemaking, NMFS does not prefer any new closures, except for complementary measures in the Madison-Swanson and Steamboat Lumps Marine Reserves. This decision is based primarily upon the analyses described in the Final Consolidated HMS FMP indicating that no single closure or combination of closures would reduce the bycatch of all species considered, when considering redistribution of effort (see response to Comment 39 of this section). Furthermore, the economic impacts associated with each of the new closure alternatives could be substantial, ranging in losses of up to several million dollars annually, depending upon the alternative, which would result in the displacement of a significant number of fishing vessels. Even when the time/area closure alternatives were combined in an attempt to maximize bycatch reduction, the ecological benefits were minimal at best, with increases in discards of some species. NMFS considered a number of closures based upon analyses with and without the redistribution of fishing effort. The Agency believes it is important to consider the redistribution of fishing effort because HMS and protected species are not uniformly distributed throughout the ocean. Fishing vessels, which are mobile, can move from one location to another, if necessary, when a closure is implemented. Therefore, a closure in one area might reduce the bycatch of one or two species, but may increase the bycatch of others. NMFS additionally considered alternative approaches to effort redistribution for closures to protect BFT in spawning areas in the Gulf of Mexico. Even when using this revised approach, which is described more fully in the Final Consolidated HMS FMP, closures in the Gulf of Mexico increase the bycatch of some of the species being considered. Based upon these results, and in consideration of other recent significant developments in the PLL fishery (mandatory circle hooks, rising fuel costs, devastating hurricanes, etc.), new time/area closures are not appropriate at this time. This decision is fully consistent with the objectives of the Consolidated HMS FMP and all other applicable law.

Comment 46: If species identification is questionable how can the impacts of closures be analyzed?

Response: NMFS agrees that species identification can be problematic, especially the identification of large coastal sharks at the dealer level. However, NMFS can evaluate the potential impacts of the various time/area closures because large coastal sharks were combined into a single group for the analyses. Identification of other species that achieve legal minimum sizes may be less problematic. Nevertheless, NMFS has used the best available scientific data to evaluate potential impacts of time/area closures.

Comment 47: NMFS must consider the turtle take and gear removal data from the first two years of the pelagic longline fishery's three-year ITS. Pursuant to the BiOp, annual take estimates based on POP and effort data are required to be completed by March 15th of each year. Additionally, NMFS should take this opportunity to provide a framework to take corrective actions as recommended by the BiOp.

Response: NMFS agrees that changes may have occurred in the PLL fishery since implementation of the circle hook requirement and safe handling and release guidelines in July 2004. NMFS currently only has finalized logbook data on the catch associated with circle hooks from July through December of 2004. 2005 was the first full year under these requirements. The final 2005 HMS logbook data became available in August 2006. NMFS will begin to analyze that data soon. Because circle hooks likely have a significantly different catch rate than J-hooks, further investigation is required to determine the potential impacts of time/area closures. The Agency will continue to monitor and analyze the effect of circle hooks on catch rates and bycatch reduction, as well as assess the cumulative effect of the current time/area closures and circle hooks. NMFS has also completed its annual take estimates of sea turtles for both 2004 and 2005. These estimates indicate that both loggerhead and leatherback interactions have decreased substantially. During 2005, the first full year under the circle hook requirement, a total of 282 loggerhead and 368 leatherback sea turtles were estimated to have been taken. This represents decreases of 64.8 and 65.8 percent compared to the annual mean for 2000 - 2003 for loggerheads and leatherbacks, respectively. With regard to the framework mechanism recommended by the BiOp, NMFS has requested comment on this mechanism and other ways to reduce unanticipated increases in sea turtle takes by the PLL fishery (August 12, 2004; 69 FR 49858). NMFS is considering the comments received

and notes that the preferred alternative to establish criteria is a step towards allowing for more proactive measures.

Rebuilding and Preventing Overfishing

A. Northern Albacore Tuna

Comment 1: NMFS received comments opposed to alternative C2, unilateral reduction in albacore fishing mortality, which indicated such restrictions would only create unnecessary waste and discards. Commenters remarked that the United States only weakens its negotiating position by taking unilateral steps prior to ICCAT action. Prohibiting retention of albacore by all U.S. vessels would have negligible conservation effects. Some commenters stated that the United States should take action ahead of ICCAT and not negotiate our position.

Response: NMFS recognizes the costs associated with imposing restrictions on albacore tuna landings for U.S. fisheries, and at the present time believes that the costs are greater than potential ecological benefits for the northern albacore stock as a whole. Restrictions that affect U.S. fishermen solely are not expected to be of significant ecological value to the Atlantic albacore stocks as a whole, as U.S. albacore landings account for less than 2 percent of the international landings. Furthermore, albacore stock assessment data has been updated but not re-evaluated since 2000. The next assessment is currently scheduled for 2007. It would not be consistent with ATCA to impose fishing restrictions on this stock in the absence of current data supporting such an action. The Agency therefore selects alternative C3, which allows the United States to build a foundation with ICCAT to develop a comprehensive management plan for albacore.

Comment 2: NMFS received comments in opposition to selected alternative C3, which would establish a foundation at ICCAT for the development of an international northern albacore tuna rebuilding program. These comments include: ''The Gulf of Mexico Fishery Management Council is concerned that regulations to rebuild the northern albacore could impact other Gulf fisheries and recommends that no action be taken in the Gulf as part of the United States foundation for the ICCAT rebuilding program, since there is not a substantial albacore catch in the Gulf''; I am leery about any regulations relating to albacore since albacore is an important fishery in Aug-Sept off Long Island; NMFS should set a bag limit of three albacore per person and a minimum size of 27 inches curved fork length now, and perhaps enact a seasonal catch limit as well.

Response: As noted by the SCRS in 2003, trends for CPUE of albacore are stable and possibly increasing for the PLL fleet; however, in the absence of more recent stock assessment data, the Agency believes that no action, or moving forward with a unilateral reduction in U.S. fishing mortality are not consistent with ATCA and are therefore not selected. In alternative C2, NMFS considered the ecological, social and economic impacts of unilateral action. Restrictions that affect U.S. fishermen solely, including the implementation of bag and size limits, or catch limits, are not expected to significantly benefit the Atlantic albacore stocks as a whole, as U.S. albacore landings account for less than 2 percent of the international landings. NMFS prefers to work with ICCAT to develop an international rebuilding plan for albacore. No immediate restrictions will be imposed on fisheries in the Gulf or elsewhere as NMFS develops the appropriate foundation for such a plan as described in alternative C3. Upon adoption of an ICCAT rebuilding plan, domestic management would be developed in separate rulemaking and Gulf regulations options may be considered at that time, as appropriate.

Comment 3: NMFS received support for establishing a foundation at ICCAT for developing an international rebuilding program for northern albacore tuna. These comments include: The management approach for Northern Albacore is favorable and NMFS should apply this approach to many other domestic fisheries; and we support alternative C3, which will actively encourage ICCAT to develop and implement an international rebuilding plan for albacore tuna. While we support an albacore-rebuilding plan, we do not believe that the United States should implement reductions on its albacore fishermen. For meaningful and effective rebuilding of albacore to take place, U.S. managers must be willing to put significant pressure on countries with high fishing mortalities; and, EU countries have felt compelled to ban gillnets in this fishery.

Response: To effectively ensure that international efforts are taken to regulate albacore fishing mortality and provide for a sustainable fishery, the Agency plans to work with ICCAT to develop a rebuilding program for this species. As current international catch rates exceed the levels needed to produce MSY, NMFS believes that international cooperation is essential to rebuild the stock and thereby provide long-term positive ecological impacts.

Comment 4: NMFS received a number of comments regarding the data that is used to determine the U.S. catch and status of Atlantic albacore, including: We are concerned about the use of survey data for the for-hire sectors of this fishery. A study by Loftus and Stone showed that the LPS data significantly underestimated recreational catches of northern albacore tuna, which supports the need for increased recreational data collection; there is a directed fishery for longfin tuna that catches albacore; this fishery is not important to the GOM but it could affect other GOM fisheries. It is important to get the data straightened out now rather than after the fact; and, we need better recreational data. The draft FMP did not pay adequate attention to data issues, including looking at a census approach rather than sampling. We need to work with ACCSP to create census data with good quality control.

Response: Adequate data collection is an ongoing concern for the successful management of Highly Migratory Species. NMFS funds the Large Pelagic Survey (LPS) which is a sampling based catch data collection program for HMS species. In two states, MD and NC, catch-card and tail-wrap tagging programs are part of the LPS, which is using the census approach to catch data collection. NMFS is working with managers to collect data for all HMS species, including Atlantic albacore, through the ACCSP program. In addition, the Gulf of Mexico Fishery Management Council has asked the Gulf States Marine Fisheries Commission to look into statistical and census-based data collection programs for HMS in the Gulf of Mexico.

Comment 5: NMFS received comments asking to explain what ''establish the foundation with ICCAT '' means in terms of a specific plan. One commenter suggested that the plan needs to be fully developed and explained in the proposed FMP.

Response: If the stock is determined to be overfished during the 2007 assessment, the United States will work with ICCAT to develop a comprehensive international rebuilding plan that would be adopted by ICCAT, and that would comply with the Magnuson-Stevens Act. Implementation of the selected alternative will include a thorough analysis of the ICCAT rebuilding program to ensure that it includes a specified recovery period, biomass targets, fishing mortality rate limits, and explicit interim milestones expressed in terms of measurable improvement of the stock. Each of these components is necessary to support the objectives of

this FMP and the intent of the Magnuson-Stevens Act. The goal of this alternative is for ICCAT to adopt an Atlantic-wide TAC for northern albacore tuna, along with other conservation and management measures, to rebuild the stock. Upon adoption by ICCAT, domestic management and conservation measures for the United States would be developed in a separate rulemaking.

Comment 6: One commenter asked how the 607 mt quota is to be divided between the commercial and recreational fisheries.

Response: Currently, the United States does not have domestic quota for recreational albacore catches, nor are there restrictions on the number of albacore that may be landed by commercial vessels issued an Atlantic tunas permit. Allocation of the quota between commercial and recreational fisheries has not been of concern during recent years as the U.S. harvest has been below the quota allocated by ICCAT. During the last eight years (1997 to 2004), an average of 161.4 mt and 311.4 mt of northern albacore were caught on longlines and rod and reel, respectively.

Comment 7: NMFS received a comment that a lot of albacore tuna are seen off New York. The commenter wanted to know how it is that NMFS can conclude they are overfished.

Response: During the last 20 years, the spawning stock biomass of albacore has declined significantly, according to the SCRS. The most recent SCRS stock assessment (reviewed in 2004, using catch at age data from 2003 to update the 2000 assessment) for albacore, indicates that the spawning stock biomass is 30 percent below maximum sustainable yield. A new assessment is anticipated in 2007. According to the Magnuson-Stevens Act, a stock is overfished if the level of fishing mortality is greater than the capacity of that fishery to produce the maximum sustainable yield on a continuing basis. The presence of fish therefore, does not necessarily mean that a stock is not overfished. However, NMFS recognizes the seasonal nature of the albacore fisheries and will take this into account in developing management measures as needed.

B. Finetooth Sharks

Comment 1: NMFS received several comments in support of seasonal commercial gillnet fishing restrictions to reduce finetooth shark fishing mortality, including one from the South Atlantic Fishery Management Council. These comments included: If seasons of high finetooth shark landings can be identified from the observer program, landings, or other data, then we suggest closing the small coastal shark fishery during that season for gillnetters, or having shark fishermen move offshore into deeper waters away from where finetooth sharks are typically found; fishing on these schools during pupping season may have significant biological implications; and, the seasonality of finetooth shark pupping should be investigated to determine whether some finetooth shark bycatch is more biologically significant than others.

Response: Seasonal closures of commercial gillnet fisheries landing finetooth shark were not analyzed as part of alternative D2 (implement commercial management measures to prevent overfishing of finetooth sharks), however, these closures may be considered in the future, as necessary, to reduce fishing mortality. Closing the small coastal shark fishery will not prevent dead discards, or account for finetooth that are landed in other fisheries such as the Spanish mackerel fishery. In the Final Consolidated HMS FMP, trips that landed finetooth sharks between 1999 - 2004, according to the Coastal Fisheries Logbook data, were analyzed by gear and month. These data indicate that the number of trips landing finetooth sharks increases in October and November. This could be attributed to finetooth sharks moving in schools southward from the Carolinas to warmer waters off Florida in these months leading to an increase in finetooth landings. Furthermore, there is an expansion of fishing effort targeting Spanish mackerel as these fish are also moving south to Florida in October and November each year, which might also lead to increased landings during this period.

Commercial shark gillnet fishermen are already subject to stringent regulations during October and November including: prohibitions on fishing in state waters of FL, GA, and SC with gillnets longer than 100 ft.; the directed shark gillnet fishery in Federal waters is subject to 100 percent observer coverage and the use of VMS in the vicinity of the Southeast U.S. Restricted Area for north Atlantic right whales between Savannah, GA and Sebastian Inlet, FL; and, all gillnet fishermen are prevented from deploying shark gillnets (stretched mesh >5 in.) in the Southeast U.S. Restricted Area between November 15 and March 31 every year. Since most states in the region have already banned gillnet gear, and because most of the fishing pressure on finetooth sharks occurs after they have already given birth to their pups in the spring and summer in coastal waters (6.5 - 23 ft water depth), seasonal closure during pupping season may not be warranted. Fishermen are not able to target finetooth sharks when fishing with gillnets because it is a non-selective gear. Therefore, any management measures solely directed at fishermen using gillnet gear and in possession of a commercial shark permit could be circumvented, as fishermen could continue to use gillnets as an authorized gear for Spanish mackerel or in other fisheries pursuing currently unregulated species. Furthermore, closures may result in increased fishing effort in other areas or seasons, which could increase dead discards of finetooth sharks.

Comment 2: NMFS received several comments in support of the preferred alternative for finetooth shark management, including: identifying sources of finetooth shark fishing mortality to target appropriate management actions is appropriate; the occurrence of overfishing is a function of data deficiency; I agree with the preferred alternative; we need clarification about the landings information in the SCS assessment; I support the preferred alternative and the stock assessment; I applaud NMFS for taking the approach with the level of uncertainty; NMFS scientists cautioned the reader about conclusions made for finetooth and blacknose shark; ASMFC is trying to address these issues; we need to know which fishery is catching these fish; I know that under the law we are supposed to reduce mortality, but I think that we need more information; we support alternative D4 because it is critical to improve the assessment for finetooth sharks in 2007; NMFS should wait on the updated assessment results for finetooth sharks before attempting a quota reduction on the commercial shark fishermen; the March 2002 SCS assessment did not have bycatch estimates to include with the short catch and catch per unit of effort (CPUE) series, as well as no catch for finetooth and blacknose sharks, which may have affected the results; if the majority of mortality occurs in non-HMS fisheries, why should HMS fishermen have to solve the problem; and if there is little connection to HMS, and if we want to get to fishing mortality, we need to collect information.

Response: NMFS agrees that implementing a plan for preventing overfishing of finetooth sharks is necessary, and that appropriate measures are included in selected alternative D4 (identify sources of finetooth shark fishing mortality to target appropriate management actions). The majority of finetooth sharks are landed in the South Atlantic region (primarily Florida) by vessels deploying non-selective gillnet gear and in

possession of both a Spanish mackerel permit and a commercial shark permit, and/or targeting species that are currently unmanaged (i.e., kingfish). Thus, any management measures that are solely directed at fishermen using gillnet gear and in possession of a commercial shark permit could be circumvented by fishermen, as they could continue using gillnets as an authorized gear while pursuing Spanish mackerel or other currently unregulated species. Reducing finetooth shark fishing mortality through regulations directed at commercial shark permit holders is further confounded because finetooth sharks are within the SCS complex, which is not currently overfished or experiencing overfishing, and because commercial fishermen have only caught, on average, 20 percent of the SCS quota between 1999 - 2004.

Finetooth sharks have a tendency to ''roll'' upon contact with gillnets and are, therefore, often dead at haulback. Observer data from the five vessels targeting sharks indicate that they are only responsible for a small portion of the commercial finetooth shark landings. Most of the gillnet vessels in the South Atlantic region have permits for both HMS and non-HMS species. If gillnets were no longer an authorized gear for harvesting HMS, vessels will continue to discard dead finetooth sharks that are caught as bycatch in other non-HMS fisheries. Furthermore, a fishery closure could lead to adverse economic impacts and unknown ecological impacts as this displaced fishing effort will likely shift to other fisheries or increase fishing pressure on LCS using bottom longline gear. Recreational landings of finetooth sharks only comprise 10 percent of annual finetooth shark landings, on average. These recreational landings of finetooth sharks translate to approximately 1.5 percent of the landings within the SCS complex.

In 2002, NMFS conducted a stock assessment for all SCS, including finetooth sharks. The catch rate series data were combined with life history information for finetooth sharks and evaluated using several stock assessment models. The lack of bycatch data in the catch series data led to low values of MSY predicted for finetooth sharks in the SCS stock assessment (especially those obtained through the SPM models). This lack of bycatch data and shorter catch and catch per unit effort (CPUE) series, coupled with no catches reported in some years, led to some uncertainty in the stock assessment for finetooth sharks. In the case of finetooth sharks, model estimates of recent F levels are above F_{msy}, indicating that recent levels of effort directed at this species, if continued, could result in an overfished status in the relatively near future.

NMFS continues to explore which vessels may be engaged in fisheries that harvest finetooth sharks and intends to conduct a new SCS stock assessment following the Southeast Assessment, Data, and Review (SEDAR) process starting in 2007. The selected alternative, which will identify sources of finetooth mortality to target appropriate management measures, is expected to increase the amount of available catch series and bycatch data by expanding existing observer programs and contacting state and Federal fisheries management entities to collect additional landings data, which may be available for the upcoming stock assessment. The selected alternative is a critical component, and a necessary step, in NMFS's plan to end overfishing of this species to comport with National Standard 1 requirements.

ASMFC is in the initial steps of developing an interstate FMP for coastal sharks. ASMFC staff has drafted a Public Information Document (PID), equivalent to a Scoping Document drafted prior to initiating a fishery management plan. The PID is currently available online at *www.asmfc.org*.

Comment 3: NMFS received several comments either opposing the selected alternative (identify sources of finetooth shark fishing mortality to target appropriate management actions), or expressing concern over the fact that more progress has not already been made to prevent overfishing of finetooth sharks, including: NMFS determined that finetooth sharks were subject to overfishing three years ago and the current preferred alternative simply collects more data on sources of mortality for the species; it has already taken three or more years to amend this plan; NMFS should reconsider proposing more specific management measures in this Draft Consolidated HMS FMP to conserve finetooth sharks; we have a species that is in trouble, and under the law, you need to do something; we are disappointed that you are picking an alternative that will not do anything for the mortality; you need to change the preferred alternative to something more conservation-oriented; NMFS has not done anything in the past 4 years and finetooth has overfishing occurring; we support alternative D4, but note our disappointment that NMFS has not already directed the appropriate Regional Council to take action to end the overfishing of finetooth sharks; NMFS should contact states directly as they should be more than willing to provide information; NMFS has made some steps forward in collecting more information, however, NMFS must work harder to get more data; and, NMFS needs to develop and pursue specific management measures to end finetooth shark overfishing.

Response: The selected alternative (identify sources of finetooth shark fishing mortality to target appropriate management actions) will implement an effective plan to prevent overfishing. Based on the best available information on the fisheries that interact with finetooth sharks, management actions that affect only HMS fisheries will not adequately address the overfishing of finetooth sharks. The majority of finetooth shark landings occur in commercial fisheries deploying a non-selective gear (gillnets) in a region (south Atlantic) where other non-HMS fisheries also deploy gillnets. Thus, measures that prohibit the use of gillnets for landing sharks (alternative D2, implement commercial management measures to reduce fishing mortality of finetooth sharks), if aimed exclusively at the commercial shark gillnet fishery, will not prevent overfishing of finetooth sharks. Most of the five vessels that comprise the commercial shark gillnet fishery also possess Spanish mackerel permits. If gillnets were not allowed for the harvest of sharks, these vessels could continue to deploy gillnets to catch other species, including Spanish mackerel, catch finetooth sharks incidentally, and then discard dead finetooth sharks. Finetooth sharks are caught in a wide range of gillnet mesh sizes and are often dead at haulback, rendering trip limits and/or gear modifications ineffective at preventing overfishing because dead sharks would continue to be discarded. Mortality of finetooth sharks in fisheries outside the jurisdiction of HMS (state waters) or in unregulated fisheries in Federal waters (i.e., kingfish) would also be unaffected. The selected alternative will provide additional information on finetooth shark landings to allow enactment of comprehensive, collaborative measures that effectively reduce finetooth shark fishing mortality.

The selected alternative will not simply collect more data. NMFS has already sent a letter to the South Atlantic Fishery Management Council and attended a recent meeting in Coconut Grove, FL (June 13–15, 2006) to request consideration of joint management initiatives. Without cooperative measures, vessels may be able to circumvent any additional regulations that would be enacted for the commercial shark fishery when

pursuing Spanish mackerel. The Agency has obtained, and will continue to evaluate, landings of finetooth sharks by non-HMS fisheries in state and Federal waters. Furthermore, the Agency has analyzed Federal logbook data to better understand what non-HMS fishermen are catching when they land finetooth sharks, has determined seasonality of landings by federally permitted fishermen, has analyzed the Federal permits of vessels that land finetooth sharks, and has analyzed the Florida trip ticket data to better understand the seasonality, extent of landings, and what permits vessels possess that are landing finetooth sharks in the State of Florida. The Agency has expanded the directed shark gillnet fishery observer program to include observer coverage on vessels using alternative types of gillnet gear (sinknet) or targeting non-HMS species to determine the extent of finetooth shark landings in these fisheries and added finetooth sharks to the select species list for bycatch sub-sampling in the Gulf of Mexico shrimp trawl fishery to monitor bycatch of finetooth sharks in this fishery. These activities will form the basis for implementing appropriate management measures to ensure that overfishing of finetooth sharks is prevented.

Comment 4: There should be a cap on the number of vessels allowed into the directed shark gillnet fishery and a limited entry program that only allows the five vessels that are currently participating in the fishery.

Response: NMFS does not currently employ a gear based permit endorsement for shark fisheries; rather, permit holders possess either directed or incidental permits and both permits are valid for any of the authorized gears for sharks (gillnet, bottom and pelagic longlines, handline, rod and reel, or bandit gear). NMFS did not consider specific permit endorsements or gear-based permits in this rulemaking, but may consider options to limit vessel participation in the shark gillnet fishery in the future. Logbook and permit data does not indicate that there has been a significant increase in recent years in the number of vessels targeting sharks with gillnet gear. The majority of shark fishermen deploy bottom longline gear for LCS; however, directed shark gillnet fishermen most frequently target SCS and blacktip sharks. As blacktip sharks and the SCS species complex are not overfished or experiencing overfishing, capping the number of vessels allowed into the fishery may not be justified.

Comment 5: NMFS received several comments in favor of banning gillnets for the directed harvest of sharks, including: banning gillnets might help reduce finetooth shark mortality; in the absence of removing gillnets from the authorized HMS gear list, there should be a requirement for year-round use of VMS on gillnet boats; drift gillnets should be prohibited; the State of Georgia supports the prohibition of gillnet gear to target finetooth sharks to prevent overfishing; and, I suggest that this fishery be banned in the South Atlantic and GOM until we determine the status of finetooth sharks and get things straight with the Right whale calf that was caught with gillnet gear.

Response: NMFS considered the prohibition of gillnet gear within Alternative D2 (implement commercial management measures to reduce fishing mortality of finetooth sharks). A similar alternative was also considered in Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. NMFS agrees that banning the use of gillnets for the five vessels that comprise the directed shark drift gillnet fishery may reduce fishing mortality of finetooth sharks. However, other gillnet fisheries in the South Atlantic that target non-HMS (Spanish mackerel and kingfish) would continue to catch finetooth sharks, and other species of sharks. Observer data indicate that the five vessels targeting sharks in the South Atlantic region are only responsible for a small portion of the commercial finetooth shark landings. Since most of the gillnet vessels in the South Atlantic have permits for both HMS and non-HMS (Council-managed) species, if gillnets were no longer an authorized gear for harvesting HMS, these vessels would continue to land, and discard dead, finetooth sharks caught as bycatch in pursuit of other non-HMS species. If gillnet gear were banned for HMS, fishermen in other fisheries would continue to catch finetooth sharks but without coordination with management entities and possibly without observer coverage. Furthermore, Federal regulations currently in place for the Southeastern U.S. Restricted Area prohibit the use of shark gillnet gear in the waters between Savannah, GA and Sebastian Inlet, FL. ''Shark gillnet gear'' is defined as a gillnet with stretched mesh greater than 5 inches. Gillnets that are less than 5 inches stretched mesh could still be deployed if the directed shark gillnet fishery were banned, and finetooth sharks would continue to be landed as a result. Gillnets are already banned in Georgia and Florida, and are restricted to less than 100 feet in length for recreational fisheries in South Carolina.

VMS is a critical tool in the enforcement of time/area closures. Because no gillnet closures were fully analyzed in the Draft Consolidated HMS FMP, the requirement to use VMS on gillnet vessels year-round was not considered as an alternative in this rulemaking. The existing requirement was originally implemented in 2003 by Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks, and requires that all vessels with gillnet gear onboard and a commercial shark permit have a functioning VMS unit onboard and that the unit is operational during all fishing activities, including transiting, between November 15 and March 31 each year. This requirement applies to all areas between November 15–March 31 and not just in the vicinity of the Southeastern U.S. Restricted Area. If additional time and area closures were implemented outside of the right whale calving season, it may be prudent to reevaluate the need for a year-round VMS requirement for all shark drift gillnet vessels.

The Atlantic Large Whale Take Reduction Team (ALWTRT) met in St. Augustine, FL, on April 10–11, 2006, to determine what course of action should be taken to prevent future interactions between right whales and gillnet gear. The ALWTRT did not reach consensus on all the management measures that were being considered at the meeting and are still deliberating on how to address the co-existence of gillnet fisheries and right whales on their calving grounds in the Southeastern U.S. Restricted Area. NMFS will work with the team to minimize mortality of these endangered marine mammals.

Comment 6: Identification of finetooth sharks is difficult because they are often confused with blacktip sharks.

Response: The Agency agrees that finetooth sharks are difficult to identify, especially for dealers who are required to positively identify shark species based on a log (carcass that has been gutted and finned). The mandatory HMS identification workshops for all shark dealers being implemented through this final rule will provide shark dealers with tools and instruction that they could employ to prevent mis-identification of finetooth sharks, and minimize the likelihood of confusion between finetooth and other species of *Carcharinid* sharks, including blacktip.

Comment 7: Spanish mackerel fishermen catch finetooth sharks intermixed with blacktip sharks.

Response: An analysis of Federal logbook data from 1999–2004 indicates that 17 vessels landed finetooth sharks with gillnet gear and possessed both a Spanish mackerel and commercial shark permit. Since gillnets are a not selective gear and finetooth sharks, blacktip

sharks, and Spanish mackerel have similar temperature and habitat preferences, it is not unreasonable to assume that all three species are landed in some gillnet sets. The Federal logbook data indicated that Spanish mackerel were the most abundant non-HMS reported on trips that landed finetooth sharks and accounted for approximately 13.6 percent (by weight) of landings.

Comment 8: NMFS states that 80 percent of finetooth sharks are caught in gillnets, and the majority are landed in FL and GA, but gillnets are banned in these states. So finetooth sharks must not be all that coastal if they are being caught outside of state waters (> 3 miles).

Response: Generally speaking, finetooth sharks inhabit shallow coastal waters of the western Atlantic Ocean from North Carolina to Brazil. Finetooth sharks travel north to waters adjacent to South Carolina when the surface temperature of the water increases to approximately 20°C then return south to off the coast of Florida when temperatures fall below 20°C. Finetooth seem to prefer water temperatures in this range, and they feed primarily on menhaden, which are also generally found closer to shore. However, finetooth sharks are opportunistic and will likely inhabit more coastal state waters or locales offshore in Federal waters as oceanographic and feeding conditions allow. Finetooth sharks may not be harvested with gillnets within State waters of Flordia, Georgia, or South Carolina, however; they would still be vulnerable to fishing mortality resulting from interactions with gear in other fisheries and may be landed in Florida if they are caught in gillnets deployed in Federal waters.

Comment 9: There are only five vessels in the fishery so where do all the catches come from?

Response: The five gillnet vessels that target sharks with drift gillnet or strikenet gear are responsible for less than 10 percent of the commercial finetooth shark landings. The majority of finetooth sharks may be landed either in state waters, or by fishermen pursuing other species, such as those managed by the Gulf of Mexico or South Atlantic Fishery Management Councils (i.e., Spanish mackerel) or species that are not currently managed (i.e., kingfish). Since these fishermen hold directed shark permits, they can opportunistically keep all finetooth sharks; however, because their harvest of finetooth sharks is incidental to landing of other non-HMS species, these vessels have not been selected for HMS observer coverage.

A recent analysis of landings data submitted via the Fishing Vessel Logbook/Gulf of Mexico Reef Fish/South Atlantic Snapper-Grouper/King and Spanish Mackerel/Shark (Coastal Fisheries Logbook) from 1999 - 2004, indicates that a total of 46 vessels reported landings of finetooth sharks. Of these, 17 vessels had only a shark limited access permit, 17 vessels had both a shark and a Spanish mackerel permit (managed under the Coastal Pelagics FMP and its amendments by the South Atlantic Fishery Management Council), and 12 vessels had neither permit. In 2003, 15 vessels reported landings of finetooth sharks and all of these vessels had both a shark directed permit and a Spanish mackerel permit. Furthermore, since approximately 29 vessels are either targeting other non-HMS species and keeping finetooth sharks opportunistically, or are not covered under existing management regimes, these vessels would likely continue to contribute to finetooth shark fishing mortality by participating in coastal gillnet fisheries within the finetooth shark's range.

Comment 10: NMFS received several comments questioning the 2002 SCS stock assessment, including: In 1995, 95 percent of finetooth landings came from PLL and not gillnets, but in 1996–2000, there was a shift to gillnet, and I do not understand why; the document says that less than 1 percent came from the commercial fishery in the GOM, how can shrimp trawls not catch finetooth?; and, 100 percent of recreational landings came from the GOM, it just does not make any sense.

Response: NMFS analyzed landings data from 1999–2004 for the analysis of alternatives to prevent overfishing of finetooth sharks in this rulemaking. It is possible that there are inconsistencies between more recent data analyzed for this rulemaking and data employed for the 2002 stock assessment. This could be the result of misidentification or misreporting of finetooth sharks, general lack of data for the 2002 SCS stock assessment, or changes in fishing effort that may have occurred. The commenter does not specify which data set in the 2002 SCS assessment they are referring to; therefore, it is difficult to explain any potential inconsistencies. Alternative D4 (identify sources of finetooth shark fishing mortality to identify appropriate management actions) will include finetooth sharks as a select species for bycatch sub-sampling in the Gulf of Mexico shrimp trawl observer program which will provide additional bycatch and landings information from this fishery. In the past, finetooth sharks were not identified in the bycatch associated with shrimp trawls, however, they may have been present. The Marine Recreational Fisheries Statistics Survey (MRFSS) and the Texas Parks and Wildlife Service estimate that 14,811 finetooth sharks were landed between 1999 and 2005. The data used for the 2002 SCS stock assessment indicate that there were several years when all of the recreational landings of finetooth shark occurred in the Gulf of Mexico. However, in other years, the majority of recreationally caught finetooth sharks were caught in both the South Atlantic and Mid-Atlantic regions. This could be attributed to changes in oceanographic conditions and/or fishing effort.

Comment 11: NMFS should investigate bycatch in other areas and consider the suite of management measures by other states that may be affecting finetooth shark mortality. In the State of Texas, there are bag limits but no commercial fisheries. Sharks can only be caught on rod and reel. They may be sold, but only one fish per boat. There are also some shrimp trawl closures (seasonal) that may provide some indirect benefits for finetooth and other sharks.

Response: Since this comment was received, NMFS has contacted the Regional Fishery Management Councils and discussed possible fisheries where finetooth sharks may be harvested incidentally. The Agency has also compiled a list of state and Council regulations that affect gillnet and bottom longline fisheries and therefore may affect finetooth fishing mortality either directly or indirectly. Creel surveys from Texas Parks and Wildlife indicate that on average, nine finetooth sharks are landed a year, with 193 landings documented since 1984. Shark specific landing restrictions similar to those imposed by Texas and other states, while helpful, may not significantly reduce finetooth landings as the majority of finetooth landings are from commercial fisheries in the South Atlantic that use non-selective gear. Successful management of this species will likely only be attained through cooperative efforts between the fishermen, States, Regional Fishery Management Councils, the Atlantic States Marine Fisheries Commission, and NMFS.

Comment 12: NMFS received several comments expressing concerns that the Agency did not know where all finetooth shark landings are coming from, including: how is it that NMFS has catch data coming from dealers, but does not know which vessels are catching finetooth?; NMFS should call the dealers and find out which types of boats are offloading/selling the

finetooth; in 1999, you changed the criteria for boats that could get a directed shark permit so that the smaller croaker boats, etc. catch sharks, and they have to report to the Federal dealer, so you should be able to get the dealer information; and dealers should be required to provide vessel information with all shark landings.

Response: General canvass data submitted by federally permitted shark dealers does not include information on the vessels from which seafood products were purchased. These reports are submitted every two weeks and include total purchases (landings) by species acquired by individual dealers. NMFS has contacted states between Texas and North Carolina to determine whether they had any records of finetooth sharks being landed. Many states maintain trip ticket programs that can be linked to individual vessels from which seafood products were purchased. This information was analyzed for the Florida trip ticket program because the majority of finetooth shark landings are occurring there. Starting in 2000, some Florida trip tickets reporting finetooth sharks identified the vessel. Of the vessels making these landings, six vessels had only a Federal shark permit, eight had both a Federal shark and Spanish mackerel permit, and three vessels had neither permit. The fact that vessels possess multiple permits reiterates the need for collaborative management efforts between NMFS, the Regional Fishery Management Councils, and individual states.

Comment 13: NMFS received a comment based on the 2005 observer report for the Directed Shark Gillnet Fishery that stated that in the shark gillnet fishery, five vessels used three different fishing methods. Of the three methods, the strikenet gets the most finetooth sharks. This is a fishery that is targeting finetooth sharks. The average size is 123 cm for finetooth sharks, which is smaller than what the recreational fishery can take.

Response: The 2005 observer report indicated an increase in the observed landings of finetooth sharks with strikenet gear. This gear is generally used to target schools of blacktip sharks, which are located from the air using a spotter plane. Historically, most observed landings of finetooth sharks occur in the drift gillnet segment of the fishery. 2005 may have been an anomalous year with regard to prey abundance or distribution, thereby making finetooth sharks more vulnerable to strikenet gear. Strikenet fishermen are subject to the same restrictions as other shark gillnet gear. The average size of finetooth sharks landed in 2005 was 123 cm, based on measurements obtained from 38 individuals.

Comment 14: NMFS received a number of comments opposed to alternative D2, implement commercial management measures to reduce fishing mortality of finetooth sharks, including: A subquota for finetooth sharks is not necessary; I oppose alternative D2 unless the fishery is harvesting its entire commercial quota; and, we are opposed to alternative D2 because it appears that the allocated quota is not being overharvested.

Response: The quota for small coastal sharks is not currently, and has never been, fully utilized. Observer data indicate that finetooth sharks are not the primary shark species harvested in the directed shark gillnet fishery. Since finetooth sharks have a tendency to roll upon contact with gillnet gear, prohibiting landings of finetooth sharks would not reduce fishing mortality, as most of these fish would then be discarded dead. Additional dead discards may encourage fishermen to make more trips to replace lost revenues, leading to more dead discards and an increase in fishing mortality level. Since the rest of the SCS complex is not experiencing overfishing and is not overfished, reducing the overall SCS quota was not considered in this FMP.

Comment 15: NMFS received several comments in support of alternative D3, implement recreational management measures to reduce fishing mortality of finetooth sharks, including: I support alternative D3 because between 2000 and 2003, 6,732 and 5,742 finetooth sharks were reported to MRFSS. What is the expansion? What are the post-release mortality estimates?; recreational landings of finetooth sharks may cause the majority of mortality for yet another HMS species; mandatory circle hooks would reduce mortality; it appears that the actions described in the preferred alternative only intend to pursue commercial mortality and ignore recreational mortality; there is a problem with shark reporting and MRFSS; no one reports finetooth sharks to the Councils; and MRFSS does not have sharks listed, but that is where I would suggest looking for information.

Response: NMFS is not selecting recreational measures (alternative D3) to reduce fishing mortality of finetooth sharks, at this time, because the vast majority of finetooth sharks are landed commercially, most recreational fisheries for finetooth sharks are likely in state waters, and there is no conclusive evidence that circle hooks would reduce post hooking release mortality of finetooth sharks. Between 1999 and 2004, average landings of finetooth sharks in recreational and commercial fisheries were 11.2 (10 percent) and 93.6 (90 percent) mt dw/year, respectively. MRFSS data would include landings of finetooth sharks in state waters, which is where most finetooth sharks are found, however, NMFS can not directly implement regulations in state waters. A study by Gurshin and Szedlymayer (2001) estimated that only 10 percent (1 of 10 captured) of sharpnose sharks, a similar species, died as a result of capture on hook and line. Post release mortality depends on water temperature, hook used, whether or not live bait is used, and the overall condition of the shark at hooking. Estimates of finetooth shark landings were obtained from MRFSS and included in this rulemaking. NMFS also does not prefer recreational measures at this time because there is already a conservative bag limit in place and a minimum size well above the size at first maturity. Recreational measures may be considered in the future as necessary. NMFS will continue to explore all sources of finetooth shark fishing mortality, both recreational and commercial, and will consider further exploration of the landings reported to NMFS and individual states.

Comment 16: Due to the lack of progress towards ending overfishing, finetooth sharks should be added to the prohibited species list while means to reduce mortality are investigated.

Response: NMFS considered, but did not analyze, an alternative that included adding finetooth sharks to the prohibited species list for Atlantic sharks. Presently, finetooth sharks do not meet any of the four criteria defined under 50 CFR 635.34(c) for inclusion of species to the prohibited species list. The existing criteria are: (1) there is sufficient biological information to indicate the stock warrants protection, such as indications of depletion or low reproductive potential or the species is on the ESA candidate list; (2) the species is rarely encountered or observed caught in HMS fisheries, (3) the species is not commonly encountered or observed caught as bycatch in fishing operations, or (4) the species is difficult to distinguish from other prohibited species (i.e., look alike issue). With regards to these criteria, finetooth sharks are not currently overfished, are commonly encountered and observed in HMS fisheries, are commonly caught as bycatch in non-HMS fisheries, and are distinguishable from prohibited species upon capture (prior to dressing). As new biological and fishery data becomes available, NMFS may make adjustments to the

prohibited species list, as needed in the future.

C. Atlantic Billfish

i. ICCAT Landing Limits

Comment 1: NMFS received a number of basic questions pertaining to the history, data, U.S. actions, and the requirements of the ICCAT marlin recommendations. The comments included: Where did the 250 marlin limit come from? What was the biological data used to limit the recreational harvest of blue and white marlin to 250 fish?; has the 250 white marlin limit ever been exceeded?; what is the harvest quota for the commercial harvest of blue and white marlin?; what is the breakdown of white and blue marlin bycatch compared to the recreational catch?; and, where does NMFS get the authority to establish a quota (250–fish marlin limit)?

Response: The annual landing limit of 250 recreationally caught blue and white marlin, combined, stems from ICCAT Recommendation 00–13. ICCAT recommendations are binding instruments that the United States, as a contracting party to ICCAT, is obligated to implement. Recommendation 00–13 was proposed by the United States and established a number of additional stringent conservation measures intended to improve the stock status of Atlantic marlin. The 250 marlin limit was the result of a dynamic international negotiation at ICCAT that included, and was supported by, the U.S. recreational, commercial, and government commissioners. Considerations in the U.S. negotiating position included, but were not limited to, data from the Recreational Billfish Survey and the Marine Recreational Statistics Survey, and intentionally included a buffer to account for changes in the fishery and improved monitoring. The Atlantic Tunas Convention Act provides NMFS with the regulatory authority to implement ICCAT recommendations by authorizing the promulgation of regulations as may be necessary and appropriate to implement binding recommendations adopted by ICCAT. The 250 marlin limit is for both blue and white Atlantic marlin combined, and was exceeded for the calendar year 2002, when the U.S. reported 279 recreationally landed marlins. This exceedance was the result of methodological change that was applied to U.S. recreational landings retroactively. Further, while the United States exceeded its landing limit in that one year, the United States remained in compliance with Recommendation 00–13 because, as allowed by ICCAT Recommendation 00–14, the U.S. underharvest from 2001 was applied to the ''negative'' 2002 balance and was of sufficient magnitude to allow the United States to comply with the recommendation. The United States does not have a commercial quota or allowable level of landings for Atlantic billfish. Commercial possession and sale of Atlantic billfish have been prohibited since 1988 in the United States. Internationally, commercial quotas vary by country. Foreign pelagic longline and purse seine vessels, the gear types that dominate commercial Atlantic billfish landings, are restricted to 50 percent and 33 percent of Atlantic blue and white marlin landings, respectively, from the years 1996 or 1999, whichever is greater. The breakdown of domestic commercial and recreational harvests varies considerably by year and are presented in detail in Chapter 4 of the Final Consolidated HMS FMP. For the period 1999 - 2004, pelagic longline dead discards and recreational harvests of Atlantic blue marlin averaged 44.2 metric tons (mt) and 22.9 mt, respectively; Atlantic white marlin averaged 31.8 mt and 2.3 mt, respectively; and Atlantic sailfish averaged 24.5 mt and 81.6 mt, respectively. These numbers do not necessarily reflect the true mortality contributions of each sector to the fishery. Recent data on post-release mortality indicates that the aggregate domestic recreational billfish mortality contribution may be equal to, or greater than, the aggregate domestic pelagic longline billfish mortality contribution, in some years, and may be the result of the substantial difference in the scale of these fisheries.

Comment 2: NMFS received public comment both endorsing and opposing preferred alternative E6, Implement ICCAT Recommendations on Recreational Marlin Landings Limits, for widely varying reasons, and with varying qualifiers. Comments in support of this preferred alternative included: We endorse alternative E6; I support alternative E6 because it has been five years since the ICCAT recommendation and we need stricter regulations; NMFS has to implement alternative E6 to comply with international obligations; NMFS must codify the 250–fish marlin limit because it came as a *quid pro quo* with other countries agreeing to measures. If the U.S. does not codify the 250–fish limit, it will result in loosening of restrictions in other countries, which we do not want; if something is not done now, ESA will take all the fisheries away from us. We should show we are doing all we can to stop the killing of marlin. NMFS should implement the 250 marlin limit and the calendar year; I'm not opposed to the 250–fish limit (alternative E6), but somehow the U.S. got into a bad deal and is stuck with it; and I support alternative E6 only if the original accounting system (RBS data) is used to count U.S. landings.

Response: NMFS agrees that the United States is obligated to implement the 250 recreationally caught Atlantic marlin landing limit and that more needs to be done to reduce fishing mortality levels on these species if they are to recover. The U.S. landing limit was part of a comprehensive plan to begin the process of rebuilding Atlantic marlins and that obligated other nations to make substantial sacrifices on behalf of their fishing interests. NMFS shares concerns that a failure of the United States to fully implement an ICCAT recommendation may allow other nations to rationalize non-compliance on their behalf. NMFS further acknowledges that domestic implementation of the 250 Atlantic marlin landing limit has taken longer than anticipated. The United States has led international conservation efforts on Atlantic marlin and other species and will maintain its credibility and leadership role on these issues by fully implementing its international obligations through the adoption of the selected alternatives.

NMFS believes that adoption of ICCAT recommendation 00–13 was an important step toward stemming long-term declines in Atlantic marlin populations and rebuilding their populations. Under this agreement, the U.S. was limited to landing 250 recreationally caught blue and white marlin combined on an annual basis, as previously discussed. The U.S. has reported marlin landings below the 250 fish limit in three of the previous four years. Other ICCAT nations whose fishermen catch and sell Atlantic marlin were obligated to reduce their pelagic longline and purse seine landings of blue marlin by 50 percent and white marlin by 67 percent. The recommendation also required release of live marlins brought to the vessel along with other various restrictions. As conditions in the fishery change, NMFS will continue to review the appropriateness of measures contained in the ICCAT recommendations and seek changes as appropriate.

NMFS acknowledges the concerns expressed by anglers regarding the use of a different accounting methodology for compliance purposes than was originally used to contribute to the negotiation of the 250 marlin limit.

However, as discussed in the response to Comment 1, the 250 marlin limit was based in part on RBS and MRFSS data, but also intentionally included a buffer to account for changes in the fishery and improved monitoring. The number was the result of a negotiation at ICCAT and not a specific scientific methodology. Under the recommendation, the United States is obligated to report all verifiable recreational landings of Atlantic blue and white marlin for compliance purposes. New sources of data on domestic recreational landings have been developed since the 2000 negotiation, including catch-card programs in North Carolina and Maryland as well as the billfish and swordfish reporting line, which provide a small number of additional marlin each year. These sources of data have represented a very limited number of verifiable fish in any given year, with tournaments representing the majority of landings.

Comment 3: Comments opposing preferred alternative E6, Implement ICCAT Recommendations on Recreational Marlin Landings Limits, included: We cannot comprehend why NMFS, knowing of our small percentage of the harvest would even consider establishing severe restrictions on the recreational harvest; this alternative A6 is unnecessary and arbitrary and should be eliminated, especially since the fishery is mostly catch and release; it should be removed at the 2006 ICCAT meeting; from a conservation and negotiating standpoint, the 250 landing cap is neither needed nor of any value to the United States; mandating this cap when low marlin landings are already driven by a strong, voluntary conservation ethic will do little or nothing to reduce overall marlin mortality; why implement increased size limits to avoid reaching the 250 mark, when the existing regulations seem to work?; there should be a provision for underages and overages; the 250 marlin limit derives only from tournament landings and is not an appropriate limit for the fishery as a whole; if NMFS restricts landings of marlin species to 250 fish and prohibits white marlin catches for five years, tournament fishing will take a massive economic hit. Towns that host tournaments would have to rely on an alternative form of tourism; I oppose Alternative E6 because it will cause economic harm, unless anglers switch to blue marlin; 250 fish are insignificant compared to longline bycatch mortality; and alternative E6 is problematic considering the unknown landings in the Caribbean. The large landings of blue marlin in Puerto Rico can be addressed through enforcement of existing management measures (minimum size, no sale, etc.); and, we must address the foreign sources of billfish mortality at ICCAT if we are to achieve the recovery of billfish stocks.

Response: NMFS disagrees that the selected alternative to implement the ICCAT established recreationally caught marlin landing limit, is unnecessary or arbitrary. This alternative will implement U.S. obligations negotiated as part of a key international agreement that has the potential to dramatically reduce fishing mortality of Atlantic marlins. As discussed in the response to Comment 1, the United States is obligated to implement ICCAT recommendations under the Atlantic Tunas Convention Act. Further, to maintain credibility and leadership on international billfish conservation issues, and limit opportunities for foreign nations to rationalize potential non-conformity with billfish conservation measures, the United States must abide by its international obligations. Unilateral elimination of the 250 marlin landing limit is not an option available to the United States. However, should ICCAT choose to do so during a future Commission meeting, it could remove the restriction thereby allowing the United States to follow suit. The implementation of U.S. international obligations is critical to a credible negotiating position and reduces the ability of other nations to rationalize potential non-conformity with international billfish conservation measures. Under the selected alternative, size limits will only increase if the United States is approaching its 250 marlin limit. The intent of a potential in-season minimum size limit increase is to minimize impacts to the fishery by slowing landings and allowing the fishery to continue until the 250 fish limit is reached but not exceeded. Allowing landings to continue at a slower pace over a longer period in the fishing year is anticipated to have fewer socio-economic impacts than a shift to catch and release only fishing earlier in a given year. Consistent with ICCAT Recommendation 00–14, this rule mandates carry-over of overharvest and allows for carry-over of underhavest. The 250 marlin limit did not stem from only tournament landings. The 250 fish limit is appropriate for the U.S. directed billfish fishery at this time. NMFS disagrees that implementation of the 250 marlin limit will cause substantial adverse economic impacts. As discussed in the response to Comment 2, the United States has landed only 75 percent of its landing limit, on average, over the past four years and in half of the years reviewed, the United States has been 40 percent below the allowable landing limit for recreationally caught Atlantic marlin.

Further, this rule to implement the ICCAT recreational marlin landings limit was specifically designed to minimize economic impacts if fishing or retention patterns change and cause the United States to approach the 250 marlin limit. Should the 250 marlin limit be achieved, because few marlin are landed (see the response to Comment 2), NMFS believes that it would occur relatively late in the fishing season, thereby affecting a limited number of fishery participants and resulting in relatively minor impacts to the fishery as a whole. There could potentially be heightened localized impacts in a small number of communities, where, for instance, tournament participation may be reduced or a tournament cancelled. However, based on the significant level of catch and release fishing practiced in the Atlantic billfish fishery (75 to 99 percent), NMFS believes any reductions in participation would be minor as fishermen could still catch and release Atlantic marlin.

Based on public comment that indicated more substantial concerns over potential adverse economic impacts to the fishery if catch and release only fishing for Atlantic white marlin were required, as well as a number of other factors including, but not limited to, the impending receipt of a new assessment for Atlantic white marlin, upcoming international negotiations on Atlantic marlin, and a somewhat limited ecological benefit, NMFS did not select the alternative to allow catch and release only fishing for Atlantic white marlin. NMFS acknowledges that the 250 recreational marlin allocated to the United States represent a small portion of total billfish mortality from the full ICCAT pelagic longline fleet. However, from a domestic perspective, if the full allocation of 250 marlin was landed by the recreational sector, it would represent approximately one-third (35 percent) of the annual number of Atlantic marlin (blue and white combined) discarded dead from the domestic pelagic longline fleet, on average, over the four year period 2001–2004. Total mortality inflicted upon the stock is of more importance to the overall health of the stock than landings or dead discards. As noted in the response to Comment 1, recent estimates and data on post-release mortality indicate that the aggregate

domestic recreational white marlin mortality contribution may be equal to or greater than the aggregate domestic pelagic longline white marlin mortality contribution, in some years. This appears to be a result of the substantial difference in the scale of these fisheries. NMFS acknowledges that there is some uncertainty associated with marlin landings statistics from the U.S. Caribbean, and the Agency is working to improve these statistics by increasing enforcement of existing permitting and reporting requirements, including those for tournaments. Finally, NMFS agrees that foreign sources of billfish mortality must be addressed at ICCAT if Atlantic billfish stocks are to recover. As such, the United States will continue its efforts to champion billfish conservation at ICCAT and in other appropriate fora.

Comment 4: NMFS received a number of comments asking for clarification of authority and the regulations pertaining to the potential implementation of alternative E6, Implement ICCAT Recommendations on Recreational Marlin Landings Limits, including: Would the ''priority'' be given to tournaments in catching the 250 fish limit?; if 20 tournament boats catch and release 10 fish in the season, what are the rest of the private and recreational anglers and thousands of boats to do? Can the unharvested portion of the 250 fish limit be carried over into the next year? Once the quota is established, which we have never approached, except for the year NMFS counted differently, then what happens?; and, does the U.S. have the authority to reduce the 250–fish limit? It goes against ICCAT. In every other case, the U.S. must give fishermen a reasonable opportunity to catch fish.

Response: The 250 recreationally caught marlin landing limit applies to the Atlantic recreational billfish fishery as a whole. NMFS does not intend to assign Atlantic marlins that are available for landing to any particular sector or component of the recreational fishery in this rulemaking. NMFS appreciates the concern expressed by some anglers regarding the opportunity to land a fish, given the large number of participants in the fishery. However, the United States has been bound by the 250 recreationally caught Atlantic marlin landing limit since June of 2001, and only in one year has that 250 fish number been achieved, as previously discussed. Under this rule to implement ICCAT recommendations on recreational marlin landings limits, if the landings limit is approached, regardless of whether those fish are landed by a small number of vessels or by many individual vessels, the Agency will consider the appropriateness of an inseason minimum size increase or prohibition on retention based on the criteria identified in the discussion of the selected alternative in Chapter 4 of the Final Consolidated HMS FMP, and contained in this final rule. Even if retention were prohibited for the remainder of a given fishing year, anglers could continue catch-and-release fishing for Atlantic marlin, and Atlantic sailfish would be available for landing. As previously discussed, 75 to 99 percent of all billfish are currently released on a voluntary basis, so NMFS anticipates little disruption in the fishery, should either a minimum size increase or a catch-and-release fishery become necessary. As discussed in the response to Comment 3, consistent with ICCAT Recommendation 00–14, this rule will mandate carry-over of overharvest and will allow for carry-over of underhavest into the next management period. The Agency will monitor recreational landings of Atlantic blue and white marlin and will make decisions as appropriate regarding in-season management actions based on the decision criteria identified in the HMS FMP and in this final rule. NMFS is not reducing the 250 recreationally caught marlin landings limit.

Comment 5: NMFS received a number of suggestions for substitute alternatives to preferred alternative E6, including: Spread the 250 fish limit over 12 months so that all areas get to land marlin (spatial and temporal); divide the 250 fish limit up by state. Let the states exchange billfish for bluefin tuna quota until each state can support the tournaments they need to; white and blue marlin should have separate limits because they are such different animals; and, not landing the 250 marlin recreational landing limit and eliminating the entire commercial billfish harvest could not solve any of the problems. To solve the problem, the United States should prohibit the importation of billfish, swordfish, and tuna from other countries.

Response: NMFS appreciates these comments and suggestions. ICCAT recently conducted a stock assessment of blue and white marlin. As such, ICCAT may reconsider the existing management measures for marlin. If this occurs, NMFS may consider these and other options as needed, if necessary and appropriate, in a future rulemaking.

Comment 6: I am opposed to counting fish that are caught by U.S. vessels fishing abroad against the United States' quota.

Response: Consistent with its ICCAT obligations, the United States accounts for all recreational landings of Atlantic marlin by U.S. citizens. If an angler onboard a U.S. flagged vessel fishing in foreign waters or on the high-seas lands a fish, then the vessel owner, or their designee, is required to report that fish to NMFS.

Comment 7: The British Virgin Islands (BVI) have separate regulations from the U.S. International coordination on HMS management is critical. In 15 minutes time, we can be out of U.S. Virgin Island waters. For us, the importance is the coordination of international HMS management. The BVI folks can catch and sell their billfish. What is being done on the international front to resolve these types of conservation concerns? The Draft Consolidated HMS FMP does not include anything that addresses international coordination efforts.

Response: NMFS appreciates the frustration felt by anglers in the Caribbean regarding the current differences in regulations between the U.S. and the BVI. The Agency also agrees that Atlantic billfish management requires international cooperation to be successful. However, these types of international management issues are beyond the scope of this domestic rulemaking, and, as such, this final rule and the Final Consolidated HMS FMP do not address relations between the United States and the British Virgin Islands or any other nation on any subject. International management issues are handled jointly between Department of Commerce and the Department of State.

Comment 8: Will the ICCAT landing limit be placed under ''Quotas'' in the Code of Federal Regulations (CFR), so that it will be easy to update annually as with tuna and swordfish quotas?

Response: The majority of the regulatory text associated with ICCAT landing limits is contained in 50 CFR 635.27(d). This section also includes the Atlantic tunas and swordfish quotas, and is the most appropriate place for the marlin regulations.

Comment 9: NMFS received a number of comments on the potential impacts of the 250 marlin limit in combination with the possible shift to only catch and release fishing for Atlantic white marlin, including: the U.S. will catch the 250–fish limit if white marlin landings are prohibited, because catches of other species will be redistributed. When you ban white marlin, people will fish for blue marlin. The bigger Northeast tournaments will fish harder on blue marlin; it's not desirable to make all of the fish under the limit be blue marlin; with the proposed change in the fishing year, some tournaments could be

penalized if they take place after the 250–fish limit is exceeded.

Response: Based on public comment expressing concern over the ratio of potential adverse economic impacts to estimated ecological benefits, the prospect of a new international assessment, an impending international negotiation, and other factors, NMFS does not prefer to implement catch and release only fishing for Atlantic white marlin at this time. NMFS disagrees with the characterization that some tournaments may be penalized if they take place after the 250 fish limit is exceeded. The United States has been bound by the 250 fish limit since it went into effect at ICCAT in June of 2001. Since then, the only mechanism that the Agency had available to address fulfillment of the 250 marlin landing limit was to implement an emergency closure of the fishery. Thus, any tournament that would have occurred after the 250 fish limit had been reached, even prior to this action, would have been required to operate on a catch and release basis only. However, they would have had little warning. This rule was specifically designed to minimize the likelihood of a shift to catch and release only fishing for Atlantic marlin. It will allow the Agency to slow marlin landings by quickly increasing minimum size(s) for the specific purpose of avoiding a mandatory shift to catch and release only fishing for Atlantic marlin, if possible, to minimize adverse impacts. If the ICCAT recreationally caught marlin landings limit is still achieved, despite the minimum size increase, then the Agency can quickly mandate catch and release only fishing. Thus, any tournament that occurs, or would have occurred, after the 250 fish limit is/was achieved, either prior to implementation of this action or after, would have to operate under an all release scenario. This final rule actually benefits tournaments because it allows NMFS to implement in-season minimum size increases, thereby reducing the likelihood of exceeding the 250 limit and forcing a shift to an all release fishery. Further, this final rule includes a 14-day delayed effective date, which will further allow tournament operators and billfish anglers to adjust to any possible in-season management actions.

Comment 10: NMFS received a number of comments regarding carry over of underharvest and overharvests, including: if NMFS intends to implement the 250–fish landing limit, underages should be added to the next year's limit and fishermen should not be penalized if the limit is exceeded; the U.S. should mandate that underages be carried-over like every other quota; codifying the 250–fish limit is not a problem, but the proposed regulations with respect to overages and underages is unacceptable. Rulemakings to deal with underages should not be necessary.

Response: As discussed in the response to Comment 3 above, this final rule mandates carry-forward of overharvest and allows carry-forward of underharvest, consistent with ICCAT Recommendation 00–14. A failure to account for overharvest, as suggested by one commenter, would be inconsistent with ICCAT Recommendation and result in non-compliance by the U.S. The U.S. has pledged to its ICCAT partners not to carry forward underharvest until uncertainty surrounding landings of marlin in the Commonwealth of Puerto Rico and the U.S. Caribbean is reduced. The Agency will publish a notice in the **Federal Register** to decrease or increase the annual 250 marlin landings limit resulting from the carry forward of over- or underharvests of Atlantic marlins. A rulemaking will be required to increase or decrease the 250 marlin recreational landing limit resulting from a new ICCAT recommendation.

Comment 11: NMFS received several questions, comments, and suggestions on billfish monitoring and reporting, including: how comprehensive or adequate is the monitoring of recreational billfish landings?; how would the public know when 250 fish are landed? Marlin recreational data collection methods are not accurate. Ninety percent of fish caught now are not reported. NMFS should implement mandatory logbooks for all permitted HMS fisheries, commercial and recreational, and require that trip reports be submitted because MRFSS interviews are not effective; enforcement is lacking. That is why people do not report their billfish landings. NMFS should develop a better system to account for marlin landings, such as tail tags; and, NMFS is not receiving all non-tournament marlin landings. There are clubs that land marlin and do not report them. NMFS should instead require each club to report their marlin landings, just like tournaments are currently required to do. Penalties should be imposed on fishing clubs that do not report.

Response: NMFS has a comprehensive system in place to record billfish landings that includes the Recreational Billfish Survey, the Atlantic HMS Non-tournament Billfish and Swordfish Reporting system, the Large Pelagics Survey (including dockside intercepts), and the Marine Recreational Fishing Statistics Survey (including dockside intercepts), as well as cooperative agreements to access landings tag/card data from the states of North Carolina and Maryland. NMFS is always trying to improve its data collection systems, and this may include future tagging programs, log book reporting programs, and improvements to the MRFSS, LPS and other systems. If the 250 marlin landing limit is achieved, NMFS will likely notify the public via a number of mechanisms, including: publication of a notice in the **Federal Register**, faxing notices to interested stakeholders, notification of the HMS consulting parties, telephone contact with recreational constituent leaders, posting information on the HMS website, placing information on the HMS Information telephone line, and working with popular sportfishing magazines and websites to notify constituents, along with other means, as appropriate. NMFS encourages the public to continue to suggest potential improvements. It should be noted however, that any reporting system relies on the willingness of anglers to accurately report. When this does not occur, the veracity of the data is compromised. NMFS acknowledges that recreational Atlantic billfish landings data do not account for every billfish landed, and thus some level of uncertainty surrounds billfish landings estimates. NMFS has undertaken efforts to improve enforcement of reporting requirements, has improved the MRFSS and LPS, and has recently received a report from the National Research Council that may allow for improvements to be made to some data collection systems.

Comment 12: NMFS received contrasting comments on the proposed five-day minimum notification period for in-season billfish management actions intended to ensure compliance with the ICCAT 250 marlin landing limit. Comments opposing a minimum five-day notification window included; we support alternitive E(6), establish the 250 recreationally caught marlin landing limit. However, 21 days would be the minimum acceptable notice period; if an additional increase in minimum size becomes necessary, a notice for an inseason adjustment should be given at least 30 days in advance. This will give tournament directors ample time to notify participants of a size change; tournament directors will need more than a few days (about a month) to make changes to their regulations, minimum sizes, and brochures if the United States approaches the 250–fish marlin limit;

and, five days is not enough time to make changes to the Atlantic billfish regulations and to inform the public of such changes, as specified in Preferred Alternative E6, which would implement ICCAT Recommendations regarding recreational marlin landings. NMFS will probably just shut down tournaments. Most HMS tournaments print their information packets long before their start date. To the extent that in-season marlin adjustments can be avoided, they should be. Comments supportive of a minimum five day notification period for in-season management action included: A five-day notice should provide sufficient time for in-season billfish management actions. Bluefin tuna has a shorter notice period. Especially with the Internet, five days is sufficient time for billfish regulatory notification for changes in size limits or closures.

Response: NMFS appreciates the concerns expressed by tournament operators and fishery participants that a five-day minimum delay in effective date may present difficulties with regard to potential rule changes just prior to or during a tournament. In selecting a period for notification and implementation of potential in-season regulatory changes to ensure compliance with ICCAT recreational marlin landings limits, NMFS sought to balance the need to act quickly, if necessary, while providing an appropriate period of time to adequately notify the public of any such regulatory changes. If too short of a period were selected, anglers and tournament operators may not have time to become aware of the regulatory changes. If too lengthy of a period were selected, restrictions may be enacted too late to ensure compliance with ICCAT recommendations or stave off more stringent in-season management measures. Based on public comment requesting additional advance notice, a review of the estimated time necessary to collect and analyze landings information and project the date at which regulatory action may become necessary, this rule provides a delay in the effective date of 14 calendar days for in-season billfish management actions, inclusive of the date of publication in the **Federal Register**. NMFS has determined that providing more than a 14 calendar day minimum delay in effective date would not provide the Agency sufficient control over the fishery if landings rates were high. NMFS believes that this 14 day period will still allow the agency to implement regulatory changes in a timely manner, thus ensuring compliance with ICCAT recommendations or staving off more stringent in-season management measures and will provide anglers and tournament operators an improved ability to adapt to any potential in-season changes. NMFS also believes that there is a substantial misunderstanding of this provision. The minimum 14 day delay in effective date means that upon publication, any in-season action to increase the minimum legal size of Atlantic marlin or requirement to shift the fishery to catch and release only cannot become effective in less than fourteen days. It does not mean that no more than 14 days advanced notice can be provided to the public, tournament operators, and anglers. The Agency will seek to project potential regulatory action as far ahead as reasonably possible to aid in mitigating any potential adverse impacts to the extent practicable.

ii. White Marlin Landing Restrictions

Comment 13: NMFS received a number of comments in support of alternative E7, Allow Only Catch and Release Fishing for Atlantic White Marlin from January 1, 2007 to December 31, 2011. Comments in support of this alternative included the need for NMFS to do all it can to avoid having Atlantic white marlin placed on the Endangered Species Act (ESA) List of Threatened and Endangered Species; the need to reduce fishing mortality to the greatest extent possible to help rebuild overfished populations; statements that there is no reason to land Atlantic white marlin in tournaments because there are techniques to verify releases, including the use of video and still cameras; it makes sense to prohibit all landings, if not all directed fishing for white marlin, since they are in severe decline; we support alternative E7, the Agency has the authority to remove the requirement earlier than five years if the assessment shows that the stock is improving; and, there is strong support for prohibiting the landing of white marlin in Florida and the Gulf.

Response: The Agency appreciates these comments, however, based on public comment indicating more significant concerns over potential adverse economic impacts to the fishery if catch and release only fishing for Atlantic white marlin were required, as well as a number of other factors, including but not limited to, the impending receipt of a new stock assessment for Atlantic white marlin and upcoming international negotiations on Atlantic marlin, NMFS did not select the alternative to prohibit landings of Atlantic white marlin at this time. The implementation of circle hook requirements is an important first step in reducing mortality in the directed billfish fishery. NMFS may consider catch and release only fishing options for Atlantic white marlin as well as other billfish conservation measures in future rulemakings, as necessary and appropriate. In regard to the Atlantic white marlin ESA listing review, any management measures in place at the time of the review would be considered during deliberations of the listing review team. NMFS cannot forecast the impacts of any particular management action on the outcome of the anticipated ESA listing review.

Comment 14: NMFS received a number of comments opposing alternative E7, Allow only catch and release fishing for Atlantic white marlin from January 1, 2007 to December 31, 2011. Those comments include: allowing only catch and release recreational fishing for Atlantic white marlin would have substantial adverse economic impacts on the recreational fishing community, including charter boat operators, shoreside facilities, and entire communities that host white marlin tournaments; NMFS underestimated the negative economic impacts of prohibiting landings of Atlantic white marlin; prohibiting landings of white marlin would do little to improve the population status of the species, the landings prohibition is unnecessary given the strong conservation ethic among U.S. anglers and as evidenced by the high release rate in the U.S. recreational fishery; the entire U.S. recreational fleet landing a few white marlin each year has little or no impact on billfish stocks; what is the rationale for prohibiting recreational landings of white marlin given the small number of recreational landings and the large economic impact generated by fishing for white marlin?; and, I do not believe in mandatory catch and release. It does not work and the public will not support it.

Response: In the Draft Consolidated HMS FMP, the Agency preferred a catch and release only alternative for Atlantic white marlin as well as a circle hook requirement for the tournament billfish fishery to reduce mortality and maximize the associated ecological benefits in the directed billfish fishery. NMFS received strong public comment opposed to the Atlantic white marlin catch and release alternative. As discussed under the response to Comment 13, NMFS is not prohibiting landings of Atlantic white marlin at this time. However, the Agency believes the implementation of the circle hook requirement is an important first step in

reducing mortality in the directed billfish fishery. NMFS appreciates these comments and will consider catch and release only options as well as other billfish conservation measures in future rulemakings, as necessary and appropriate.

Comment 15: NMFS received a number of comments specifically pertaining to the potential impacts of alternative E7 (which would allow only catch and release fishing for Atlantic white marlin from January 1, 2007 to December 31, 2011) on tournament operations. Those comments include: the proposed rule would unfairly affect white marlin tournaments along the United States mid-Atlantic coast; few white marlin are landed in tournaments; tournaments are the only cost and personnel effective means to scientifically sample Atlantic white marlin; alternative E7 would change the dynamic of fishing tournaments from contests where an anglers' luck or skill may prevail (biggest fish) to one where only skill would prevail (most fish) and would thus decrease participation; alternative E7 would create operational problems for tournament operators pertaining to verification of released fish; a fish killed and discarded as bycatch in the pelagic longline fishery has no direct economic impact. However, a fish killed as a tournament trophy or through release mortality contributes to a multi-million dollar industry and benefits the local economy and the nation as a whole; if alternative E7 is implemented, people will not go to tournaments to see the results; my concern for tournaments is that people like to see the result on the docks. If NMFS is going to full catch and release for white marlin, I do not believe that people will look at tournament videos of catches. The social aspect and behavior of tournament participants will be negatively impacted; there are decreasing numbers of tournament participants who are participating in the White Marlin Open under the catch and release category; Maryland has the most to lose by prohibiting landings of white marlin. Ocean City is the white marlin capital of the world. Ocean City should not suffer the loss of the White Marlin Open; and, alternative E7 is unnecessary, will accomplish nothing for conservation, and would have a significant impact on billfish tournaments in the mid-Atlantic areas.

Response: As stated above in the response to Comments 13 and 14 of this section, NMFS has not selected the catch and release alternative for Atlantic white marlin in the Final Consolidated HMS FMP. Based on overwhelming public concerns for the social and economic impacts resulting from a shift to catch and release only fishing for white marlin, as well as the recognition of the limited ecological benefits relative to the potentially adverse social and economic impacts to billfishermen, tournaments, and other shore side businesses, as well as other reasons discussed under the response to Comment 13, the Agency has determined that it is premature to implement this measure at this time. The Agency will, however, consider catch and release only options as well as other billfish conservation measures in future rulemakings, as necessary and appropriate.

Comment 16: NMFS received comments requesting that the Agency modify alternative E7 to allow for some tournament landings of white marlin. Those comments include: if the Agency cannot go with zero landings, then implement a cap for tournaments that already have a history of landing white marlin. Do not throw out the whole proposal; and, if NMFS prohibits landings of white marlin, the Agency should allow retention of recreationally caught white marlin in tournaments or when prominent billfish tournaments are scheduled.

Response: NMFS appreciates these comments and suggestions to address mortality in the directed billfish fishery. At this time, the Agency does not believe that only allowing Atlantic white marlin to be landed in tournaments is the most appropriate solution, as nearly all Atlantic white marlin reported as retained are landed in tournaments. The Agency will, however, consider catch and release only options as well as other billfish conservation measures in future rulemakings, as necessary and appropriate.

Comment 17: The U.S. only lands less than 1 percent of the white marlin, so why worry about mortality?

Response: The U.S. is responsible for approximately 4.5 percent of white marlin catches in the Atlantic. Fishing mortality rates are a concern regardless of the size of the U.S. contribution because the current fishing mortality rate is more than eight times the level that the species can sustain. As a steward of the fishery, it is appropriate for the U.S. to work towards reducing and limiting both domestic and international fishing mortality rates. The U.S. will continue its efforts to reduce billfish mortality domestically and through ICCAT at the international level.

Comment 18: NMFS received comments concerned with fishermen shifting target species if white marlin landings are prohibited. Those comments include: it's not desirable to make all of the fish under the ICCAT 250 marlin limit be blue marlin, which would happen if white marlin landings are prohibited; I would not support a prohibition on landing white marlin because we will kill more white marlin converting to targeting blue marlin; and, I oppose alternative E7 because fishing effort will be redistributed to different species.

Response: As stated in the responses to Comments 13 and 14 of this section, NMFS is not prohibiting landings of Atlantic white marlin at this time. NMFS understands the concern over potential increases in Atlantic blue marlin mortality, given the species' overfished status. The selected circle hook measure and measures to codify and ensure compliance with the ICCAT marlin landings limit will address mortality of both Atlantic blue and white marlin in the directed billfish fishery. The Agency may consider catch and release only options, as well as other billfish conservation measures, in future rulemakings, as necessary and appropriate.

Comment 19: Tournament spectators can still be involved in release tournaments if you use large viewing screens playing movie clips showing the fight and release of marlins. Dead fish on the dock do not allow for this type of participation.

Response: NMFS applauds the innovative efforts of some tournament organizers in working to limit marlin mortality. The Agency urges tournament organizers to be creative and to work to create formats that maximize the social and economic benefits from tournament operations while minimizing impacts to billfish resources.

Comment 20: NMFS received comments recommending that the Agency should implement measures to further reduce marlin mortality in other fisheries. Those comments include: NMFS should implement additional regulations on the pelagic longline fishery, which is responsible for the majority of marlin mortality, not impose landings restrictions on recreational fishermen; alternative E7 places a restriction on recreational fishermen without addressing the real issue; I am opposed to alternative E7 because recreational landings are not the problem; and, the billfish fishery was supposed to be managed for the recreational sector and NMFS has failed to make any meaningful reductions in bycatch captured on longlines issue since 1997.

Response: In recent years, the Agency has undertaken multiple rulemakings

intended to reduce bycatch and bycatch mortality in the pelagic longline fishery. Since implementing the 1999 FMP, NMFS has closed multiple areas to pelagic longline fishing, prohibited the use of live bait in the Gulf of Mexico, required the use of circle hooks, and required the possession and use of dehooking devices. The closed areas and live bait restriction were implemented, in part, to reduce the bycatch of billfish in commercial fishing operations. Circle hook and release gear requirements were implemented to reduce sea turtle bycatch and bycatch mortality, however, these measures likely contribute to reductions in billfish release mortality as well. Further, as discussed in more detail under the response to Comments 1 and 3, recent data and estimates on post-release mortality indicate that the aggregate domestic recreational billfish mortality contribution may be equal to or greater than the aggregate domestic pelagic longline billfish mortality contribution, in some years.

Comment 21: NMFS received comments relating to the ESA listing review of white marlin. Those comments include: Would a prohibition on landings of Atlantic white marlin influence the potential listing of Atlantic white marlin under the Endangered Species Act?; and, selecting alternative E7 will not necessarily prevent an ESA listing of white marlin.

Response: The listing review team would consider any management measures in place at the time of the Atlantic white marlin ESA listing review. NMFS cannot predict the effect of any particular management action on the outcome of the anticipated ESA listing review.

Comment 22: The white marlin settlement agreement between NMFS and Turtle Island Restoration network does not preclude further regulation of billfish catches under the Magnuson-Stevens Act, but does require a complete reassessment of white marlin by the U.S. no later than 2007.

Response: The Agency intends to complete the Atlantic white marlin ESA Listing Review on or before December 31, 2007, as provided in the settlement agreement. NMFS has the authority to impose additional restrictions on fisheries that interact with Atlantic white marlin, including the directed billfish fishery; however as discussed under the response to Comment 13, NMFS is not prohibiting landings of Atlantic white marlin at this time. The implementation of circle hook requirements is an important first step in reducing billfish mortality in the directed billfish fishery. NMFS will consider catch and release only options, as well as other billfish conservation measures, in future rulemakings if they are necessary and appropriate.

Comment 23: NMFS received comments inquiring about the Agency's legal authority to prohibit landing of white marlin. Those comments include: NMFS does not have the legal authority to restrict landings of Atlantic marlin to levels below ICCAT landings limits; I am opposed to alternative E7 because it is contrary to giving fishermen a reasonable opportunity to catch fish as required by ATCA.

Response: The ICCAT 250 marlin landings limit could apply to both species combined, or one species alone, if landings of the other species were to be prohibited domestically. ICCAT Recommendation 00–13, and the subsequent recommendations that modified it, did not include species specific landings limits or any references to particular landings ratios of Atlantic blue and white marlin. The ICCAT recommendations simply provided an aggregate annual landing limit that is not to be exceeded. Thus, if the landings of one marlin species were prohibited domestically, anglers would have 250 of the other marlin species available for landing, thereby providing a reasonable opportunity for anglers to fulfill their ICCAT landing limit.

Comment 24: Why is there a time frame associated with alternative E7? The target should be MSY. The proposed time frame seems political. A biological threshold seems more appropriate.

Response: NMFS believed that a five-year time frame would have allowed for adequate time to gauge the potential impacts of such measures on marlin stocks and determine, at that point, if the measures achieved the objectives of the fishery management plan. Additionally, NMFS is required to consider factors beyond biology in making management decisions. However, as noted in the response to Comment 13, NMFS has not selected this alternative in the Final Consolidated HMS FMP, but may consider landings prohibitions for Atlantic marlins and other species in future rulemakings, as necessary and appropriate.

Comment 25: Recreational fishermen would release all billfish if they thought it would do any good. However, it will not. The U.S. has always said that its catch is an insignificant piece of the Atlantic-wide take. The Draft FMP throws this concept out the window and directs its regulatory muscle at a tiny number of recreational billfish landings. It is as if NMFS is deciding to make them a prohibited species before the ICCAT stock assessment or the ESA status review.

Response: NMFS believes that the majority of recreational fishermen understand the value of catch and release fishing for Atlantic billfish as supported by the 75 to 99 percent release rate in this fishery. NMFS believes that catch and release fishing significantly reduces the domestic mortality contribution to the Atlantic-wide stock. The implementation of circle hook requirements for this sector of the fishery is expected to significantly reduce post release mortality. The Agency recognizes that other ICCAT nations kill significantly more billfish than the U.S. In comparison to other nations, the U.S. landings and dead discards represent approximately 2.4 and 4.5 percent of total Atlantic landings of Atlantic blue and white marlin, respectively. Recent information suggests that the U.S. mortality contribution for Atlantic billfish may be significantly higher than previous estimates, given new studies on recreational post-release mortality. This rulemaking seeks to minimize this mortality.

Comment 26: The entire U.S. recreational fleet and charter/headboats are landing very few white marlin each year, approximately 227 total fish over the last three years. These landings have little or no impact on the stock, but generate tremendous social and economic benefits for coastal communities particularly where tournaments are held.

Response: NMFS acknowledges the significant social and economic benefits that the recreational billfish fishery provides to coastal communities. Additionally, NMFS acknowledges the limited conservation benefit that could be realized from a prohibition on the landings of Atlantic white marlin. This measure was preferred in the Draft Consolidated HMS FMP in addition to a circle hook requirement for tournament billfish fishermen. The Agency preferred these alternatives together in an attempt to maximize reductions in total Atlantic white marlin mortality resulting from the directed billfish fishery. However, as noted in the response to Comment 13, NMFS did not select this alternative in the Final Consolidated HMS FMP, but may consider landings prohibitions for Atlantic marlins and other species in future rulemakings, as necessary and appropriate. The Agency has selected a non-offset circle hook requirement for HMS permitted vessels participating in billfish tournaments. This measure is

anticipated to substantially reduce mortality without the potential adverse economic impacts associated with a prohibition on white marlin landings.

Comment 27: NMFS received comments in support of alternative E8, which would allow only catch and release recreational fishing for Atlantic blue marlin. Additionally, one commenter added that alternative E8 may be needed if overfishing cannot be addressed.

Response: This alternative was analyzed but not preferred in the Draft Consolidated HMS FMP or Final Consolidated HMS FMP due, in part, to potentially severe negative social and economic impacts, and for other reasons. The U.S. will continue its efforts to reduce billfish mortality both domestically and at the international level. Additionally, the Agency may consider catch and release only options for Atlantic blue marlin as well as other billfish conservation measures in future rulemakings, as necessary and appropriate.

Comment 28: NMFS received comments opposed to alternative E8, which would allow only catch and release fishing for Atlantic blue marlin from January 1, 2007 to December 31, 2011. Those comments include: we are vehemently opposed to alternative E(8), catch and release only for blue marlin. This is not a conservation issue, this is a socio-economic issue and to implement alternative E8 would be economic suicide; and, this alternative exceeds the ICCAT Recommendations for this species. NMFS should focus on compliance with ICCAT's recommendations. The U.S. directed billfish fishery should be allowed to harvest its allocated quota.

Response: The Agency did not select this alternative in the Draft Consolidated HMS FMP, however, it remains a valid management tool available to NMFS if warranted by stock status or other factors. NMFS selected an alternative that will fully implement U.S. international obligations contained in ICCAT Recommendation 00–13 and subsequent amendments. Additionally, the Agency has selected other domestic measures in the Final Consolidated HMS FMP to reduce post-release mortality of billfish stocks.

Comment 29: By itself, alternative E8, which would allow only catch and release fishing for Atlantic blue marlin from January 1, 2007 to December 31, 2011, will not substantially reduce blue marlin fishing mortality unless 100 percent circle hook use, careful handling/release tools, procedures, and training are also required. Even then, unless such responsible actions are taken by foreign fisheries, especially in the directed fisheries, reducing the U.S. blue marlin fishing mortality is unlikely to have substantial conservation gains.

Response: NMFS agrees that improved handling and release skills may reduce domestic post-release mortality of billfish, and that it is critical for foreign fishing nations to reduce total Atlantic billfish mortality to improve the stock status of these species. NMFS did not consider the other measures suggested in Comment 29, such as careful handling and release tools, and thus, they are beyond the scope of this rulemaking. NMFS may consider these measures in a future rulemaking, if necessary and appropriate. NMFS also agrees that international cooperation is essential to rebuilding Atlantic billfish populations and, as such, will continue to pursue international billfish conservation through ICCAT.

Comment 30: NMFS should not impose any new restrictions on HMS tournaments until after 2006.

Response: To provide Atlantic billfish tournament operators and participants time to acclimate to new regulations requiring the use of non-offset circle hooks when natural baits and or natural bait/artificial lure combinations are deployed from HMS permitted vessels that are participating in billfish tournaments, NMFS has selected January 1, 2007, as the effective date for these requirements. Barring unforeseen circumstances, no new restrictions will be imposed on HMS tournaments during 2006.

Comment 31: NMFS should consider a limited entry system for tournaments with a specific white marlin quota. Tournaments should be issued a permit and a quota for white marlin kills. Outside of tournaments, recreational vessel owners should be required to have a permit and to abide by a catch-and-release only policy. This would allow for the continuation of HMS tournaments, which provide the largest economic benefits. It would also facilitate more accurate counting of marlin, and provide some fish for biologists to conduct scientific research.

Response: NMFS appreciates the suggestions submitted to the Agency regarding potential additional tournament regulations and other management suggestions for the directed billfish fishery, and asks commenters to continue to submit innovative ideas to improve billfish management. As discussed above, ICCAT has conducted a marlin stock assessment and may reconsider management measures for billfish at its annual meeting in November 2007. If this occurs, NMFS could consider comments such as these in future rulemakings, as necessary and appropriate.

Comment 32: How many Atlantic white marlin are brought to the dock in tournaments each year?

Response: Between 1999 and 2004, inclusive, a total of 144 Atlantic white marlin were reported to the Recreational Billfish Survey as landed in tournaments. According to RBS data, landings of Atlantic white marlin in tournaments ranged from a low of eight in 2000, to a high of 36 in 1999, and averaged 24 annually for the six year period under discussion.

Comment 33: All fishing tournament participants should be required to use circle hooks, not just billfish tournament participants.

Response: NMFS believes that the current severely overfished stock status of Atlantic blue and white marlin and the proven ability of circle hooks to reduce post-release mortality support the selected alternative to require use of non-offset circle hooks in billfish tournaments. However, NMFS believes that more data on the impacts of circle hooks on non-billfish species and other fisheries should be collected and analyzed prior to proposing additional hook and bait requirements for all HMS tournaments. NMFS may consider additional hook and bait requirements for other segments of the HMS recreational fisheries in future rulemakings, as appropriate.

Comment 34: I spend $3,000.00 a year on the White Marlin Tournament in Ocean City, Maryland. There are five fishermen on the boat pumping $15,000 into the Ocean City, Maryland, economy on our boat alone. I do not want this tournament to end.

Response: NMFS is interested in seeing a healthy HMS tournament industry continue operations and continue to provide benefits to the nation. The final management measures regarding Atlantic billfish, implementation of non-offset circle hook requirements under certain conditions in billfish tournaments, and the ICCAT recreational marlin management measures, have been crafted in a way to minimize and mitigate potential adverse socio-economic impacts and are not expected to have significant impacts on billfish tournaments. Please refer to Chapter 4 of the Final Consolidated HMS FMP for additional detail regarding the estimated impacts of the selected alternatives.

Comment 35: NMFS received several comments, including one from the Gulf of Mexico Fishery Management Council, in favor of increasing the minimum size

limits for white and/or blue marlin, including: even a limited benefit is worth implementing; people interested in a smaller size limit are trying to make loopholes so they can catch and keep smaller fish; NMFS should increase the size limit of blue marlin because the Puerto Rico Game fish association has only taken 15 marlin all year in tournaments; increasing the size by approximately 40 percent, we would not have to apply the 250 fish cap; I support E4(b), increasing the minimum size of blue marlin because length and weight are correlated for blue marlin; increase the minimum size for blue marlin to 105 inches LJFL because most tournaments have a minimum weight of 400 pounds; increasing the minimum size for blue marlin would reduce the number of legal fish landed by one third; there should be at least a 106 inch minimum size limit to allow them to live for three more years and at least two years of spawning; and, I support a minimum size of 104 inches for blue marlin.

Response: The Agency is not increasing minimum sizes of Atlantic blue or white marlin at this time for several reasons. Only limited conservation benefits might be attained by increasing the minimum sizes for marlin because relatively few blue and white marlin are landed on an annual basis. In 2004, 118 blue marlin and 18 white marlin were reported to ICCAT, comprised mainly of tournament landings, but also including North Carolina and Maryland catch card landings, and non-tournament landings reported to HMS. Since the majority of landings occur in tournaments and many tournaments already have a minimum size greater than the current minimum size, increasing the minimum size may not have any significant ecological benefits. The Agency has also received information that white marlin might not display a consistent length-weight relationship, meaning that very few of these fish would even attain the minimum size if it were increased.

The United States is currently well below the 250 fish limit imposed by ICCAT and, therefore, does not need to reduce landings to comply with international obligations at this time. Lastly, other management measures selected in this action (mandatory use of circle hooks when using natural bait by HMS permit holders in tournaments that have a billfish prize category and implementation of ICCAT recommendations that establish an in-season adjustment framework to increase minimum sizes or catch and release, if necessary) should result in the desired conservation benefits by reducing landings if the ICCAT landings limit is approached in the future and reducing post release mortality of billfish caught in tournaments. The Agency may consider permanent modifications to the minimum size in the future as necessary to ensure compliance with international obligations and facilitate rebuilding of blue and white marlin stocks.

Comment 36: NMFS received numerous comments opposing the implementation of a minimum size for white and/or blue marlin as described in Alternative E4 (a), increase the minimum legal size for Atlantic white marlin to a specific size between 68 - 71 inches LJFL and Alternative E4 (b), increase the minimum size of blue marlin to a specific size between 103 - 106 inches LJFL, including: many tournaments already have a larger minimum size than what NMFS has implemented (i.e., 110 inches or 400 lb), therefore, no benefits will be realized from increasing minimum sizes; NMFS had already established minimum size limits for white and blue marlin and these limits should not be increased; because of the differences in growth patterns between white and blue marlin, an increased size limit for white marlin would be ineffective because these fish grow to size and then put on additional weight and not necessarily length; for white marlin weight and length are not closely correlated for fish above 62 inches LJFL; there is no rationale for increasing minimum sizes, because requiring circle hooks will accomplish the same thing; and, why implement increased size limits to avoid reaching the 250 mark, when the existing regulations seem to work?

Response: NMFS did not select an increased minimum size for white or blue marlin at this time, however, NMFS may consider modifications to minimum sizes in the future, as necessary. NMFS is unaware of the exact number of billfish tournaments that currently require a minimum size greater than the current Federal regulations, however, they are numerous. Since this is where the majority of reported landings occur, increasing the minimum size may not result in significant positive ecological benefits. In 2004, all but 3 of the 149 billfish reported to ICCAT were landed in tournaments. The United States has been well under its ICCAT allocated quota of 250 billfish/year every year (except 2002), and the measures in this final rule would increase the minimum size for Atlantic white and blue marlin if there were a possibility of approaching the landings limit in the future, thereby mitigating the need to permanently increase minimum sizes to comply with the ICCAT landings limit. NMFS also is mandating the use of non-offset circle hooks in billfish tournaments by HMS anglers when deploying natural baits to reduce post hooking mortality of released fish. Furthermore, because the majority of billfish are caught and released and catch rates are low (1.03 and 1.13 white and blue marlin per 100 hours angling, respectively), conservation benefits of increasing the minimum size may be minimal.

Comment 37: NMFS received comments both opposing and supporting alternatives E4(a) and E4(b) on the basis that a larger size limit would result in fishermen targeting larger, more fecund females and that NMFS should consider a slot limit to protect these larger, more fecund, marlin.

Response: Generally speaking, the likelihood of landing a more fecund female may increase if NMFS implemented a larger minimum legal size for blue marlin. For white marlin, the correlation between length and age or fecundity is less certain as current information indicate that white marlin may first put on length, and then weight. The fishery is generally opportunistic in nature, with a low CPUE, and with little ability for fishermen to ''target'' a large or small billfish. Further, the recreational billfish fishery is an overwhelmingly catch and release fishery. As such, while a larger legal minimum size may result in larger fish being landed, it is unlikely that anglers could successfully ''target'' larger billfish. NMFS appreciates the suggestion of analyzing a slot limit, and encourages anglers to continue to submit suggestions to the Agency. As discussed in the response to comment 35 above, NMFS did not select an alternative to change the minimum size but may reconsider minimum size changes, including slot limits, in the future.

Comment 38: NMFS received a comment asking what data were used to determine the billfish size limits.

Response: Size distributions from Atlantic billfish tournaments held from 1995–1997 were used to analyze minimum size alternatives contained in Amendment 1 to the Billfish FMP (1999), which resulted in the current minimum legal sizes for Atlantic billfish. Minimum size ranges analyzed for this rulemaking were based on RBS landings of white and blue marlin in tournaments between 1999–2004.

Comment 39: NMFS received several comments in support of Alternative E5 (bag limit of one billfish/vessel/day), including: the United States is already

under such a limited quota for white and blue marlin (250 fish/year combined for both species) that a bag limit is necessary; a bag limit might result in some high grading, but it should not be much of a problem; and, if the United States recreational sector is limited to 250 blue marlin and white marlin, it is inappropriate to let one boat come back with more than a single fish on any given day.

Response: NMFS recognizes the concerns of anglers regarding allocation of fish, particularly given the strict marlin landings limits placed upon the United States. As discussed in Chapter 4 of the Final Consolidated HMS FMP, the United States is limited to 250 white and blue marlin, combined, on an annual basis, per ICCAT Recommendation 00–13. Since 2001, the United States has only exceeded its annual 250 fish limit one time (2002), and that was because of a modification to the accounting methodology for compliance with ICCAT. NMFS has selected the alternative to implement ICCAT Recommendation 00–13 in the Final Consolidated HMS FMP. At this time, there is little evidence suggesting that individual anglers are landing excessive numbers of marlin and potentially depriving other anglers of the opportunity to land a marlin. No multiple marlin trips have been reported to the Atlantic billfish and swordfish non-tournament landings system. However, NMFS may consider implementation of a bag limit in the future as necessary and appropriate.

Comment 40: NMFS received several comments objecting to alternative E5 (bag limit of one billfish/vessel/trip) for varied reasons, including: it would encourage the culling of fish; landing a few fish is not the issue; and, a bag limit will not reduce post-release mortality of billfish unless careful handling and release guidelines are followed.

Response: As discussed in the response to Comment 39, there is little evidence, at this time, that individual anglers are landing excessive numbers of marlin on individual trips and potentially depriving other anglers of the opportunity to land an Atlantic marlin. Further, as described in the response to Comment 39, overall landings of Atlantic marlin by U.S. recreational fishermen are low and well below the U.S. marlin landing limit. This is due, in large part, to the anglers who choose not to land marlin that are legally available for landing. NMFS is always concerned about the potential for increases in culling and discards which may result from regulation. NMFS acknowledges the limited conservation benefit that a bag limit may produce and agrees that a bag limit alone would not reduce post-release mortality. NMFS selected a circle hook alternative in the Final Consolidated HMS FMP that is expected to reduce post-release mortality of Atlantic billfish.

iii. Gears and Gear Restrictions

Comment 41: NMFS received comments in support of non-preferred alternative E2, which would require the use of circle hooks in all HMS recreational fisheries when using natural bait, including: only a fraction of the offshore recreational effort occurs in tournaments so the conservation benefits would be larger if circle hooks were required in all offshore fisheries. This alternative would facilitate enforcement by requiring that all HMS fishermen use circle hooks; NMFS should require circle hooks, careful handling/release tools and training for all HMS hook and line fisheries that interact with white marlin. This may be the only way for NMFS to prevent an ESA listing for white marlin. It cannot be ignored that the directed recreational fishery is likely the majority of domestic white marlin mortality, which is a minute percent. Unfortunately, even such a sacrifice may not be successful, unless adopted by other foreign fisheries, especially directed fisheries that interact with white marlin. Circle hooks are needed for all HMS fisheries, not just in tournaments. If an HMS fishery interacts with billfish, then it needs to use circle hooks.

Response: NMFS agrees that Atlantic billfish tournaments represent a subset of total fishing effort targeting Atlantic billfish and that there would be a greater conservation gain if circle hooks were required in all offshore recreational fisheries. NMFS is interested in all potential means of further reducing the post-release mortality of all HMS. However, NMFS prefers to collect and evaluate additional data regarding the impacts of circle hooks on non-billfish species and fisheries prior to mandating circle hooks for all HMS fisheries. Other possible methods of reducing post-release mortality of all HMS could include the required use of careful handling and release guidelines, release equipment, and training. NMFS may consider the feasibility of additional circle hook requirements and other requirements in the future, as suggested by the commenter. NMFS also agrees that uniform fishery-wide circle hook requirements will likely facilitate enforcement. However, NMFS believes that the requirement to use circle hooks by permitted HMS fishermen when natural bait and natural bait/artificial lures are deployed in billfish tournaments can be adequately enforced by NMFS Office of Law Enforcement. NMFS further believes that, given the vested financial interests of billfish tournament participants in ensuring that all tournament participants compete under the same rules and conditions, tournament circle hook requirements will be significantly self-enforced. The Atlantic White Marlin ESA Listing Review Panel would take into consideration the impacts of all regulations in effect, including circle hook requirements, when making its recommendations. NMFS cannot predict the outcome of these deliberations or the direct impact that any particular regulation may have on the outcome of such deliberations. Data indicate that the domestic directed fishery for Atlantic white marlin is responsible for a significant proportion of total domestic white marlin mortality, and may, in some years, exceed the level of mortality inflicted by the domestic pelagic longline fleet. NMFS also agrees that the directed domestic fishery for Atlantic white marlin and the bycatch of this species in other domestic fisheries represents only a small portion of total Atlantic-wide mortality, on both an individual and a collective basis. NMFS also agrees that the recovery of this depleted fishery is dependant upon the cooperation of the international community. To this end, the U.S. continues to pursue marlin conservation at the international level through ICCAT.

Comment 42: NMFS received conditional support for alternative E2, Effective January 1, 2007, limit all participants in Atlantic HMS recreational fisheries to using only non-offset circle hooks when using natural baits or natural bait/artificial lure combinations, including; I support the use of circle hooks with natural baits in all HMS fisheries, only if no J-hooks are allowed on board the vessel.

Response: Public comment during the scoping phase of this rulemaking was nearly unanimous on the need to allow the use of J-hooks with artificial lures when fishing for Atlantic blue marlin given the feeding behaviors of this species. Additionally, in its analysis of circle hook requirements, NMFS found that the post-release mortality rate of Atlantic blue marlin caught recreationally on J-hooks appeared to be comparable to post-release mortality rates of Atlantic white marlin caught recreationally on circle hooks. As such, this rule, which requires the use of non-offset circle hooks by permitted HMS fishermen when natural bait or natural bait/artificial lures are deployed in

billfish tournaments, but allows J-hooks to be used with artificial lures, will likely reduce mortality in the directed billfish fishery and provide a significant and appropriate conservation benefit.

Comment 43: NMFS received comments opposing Alternative E2, including: I do not support alternative E2; I am concerned about requiring circle hooks in all HMS fisheries because dolphin, wahoo, king mackerel, and inshore fisheries could be impacted; how would NMFS determine who is in the HMS fishery?; I strongly oppose requiring the use of circle hooks in all HMS fisheries because circle hooks do not work on swordfish and the catch rate goes down; and there may be a problem in terms of enforcement with making circle hooks mandatory in all HMS fisheries (alternative E2), but it could work in Atlantic billfish tournaments (preferred alternative E3).

Response: NMFS acknowledges that requiring circle hooks in all HMS fisheries could affect secondary fisheries, including dolphin, wahoo, king mackerel, and other inshore fisheries. As previously acknowledged, NMFS prefers to collect additional data on the impacts of fishery-wide circle hook requirements. Such data collection would include HMS fisheries and may also include some non-HMS species and fisheries. The NED circle hook study indicated that deployment of circle hooks in the commercial pelagic longline fishery can result in a decrease in the number of swordfish caught under some oceanographic conditions. However, NMFS has only limited data on the impact of circle hooks in the recreational swordfish fishery. With regard to enforcement, NMFS believes that given the vested financial interests of billfish tournament participants in ensuring that all tournament participants compete under the same rules and conditions, tournament circle hook requirements will be significantly self-enforced.

Comment 44: NMFS received comments on the adequacy of data and assumptions made in support of non-preferred alternative E2, which would require all HMS fishermen to use circle hooks when using natural bait and preferred alternative E3, which would require the use of non-offset circle hooks in billfish tournaments when using natural bait, including: NMFS cannot justify alternatives E2 or alternative E3. We do not believe that there is data to support the preferred alternative to require circle hooks in tournaments; and, the assumptions made to support the use of circle hooks are not specified in the text and leads one to believe that there is another set of assumptions that would not support the use of circle hooks. Where the ''23 percent overall'' figure comes from is not discoverable in the text. It is one of those derived from assumptions that are not spelled out. The ''65.7 percent'' figure is right from the Horodysky and Graves study which, as argued, is insufficient to support any of the proposals.

Response: The significant potential reductions in post-release mortality of recreationally caught Atlantic billfish that are anticipated to be achieved through the shift from J-hooks to non-offset circle hooks in the directed fishery provide ample support for implementing these measures. Reducing the post-release mortality of Atlantic white marlin by two-thirds would be a landmark achievement. The shift to circle hooks in the directed Atlantic billfish fishery is the most effective single management tool known to the Agency at this time to control post-release mortality, and has the added benefit of having minimal impacts on the fishery. NMFS has relied on publicly available peer-reviewed scientific papers and available recreational data sets in developing its analyses. The assumptions made to support the use of circle hooks are articulated in Chapter 4 of the Final Consolidated HMS FMP. The reference to 23 percent overall reduction represents another statistical perspective on the anticipated reduction. It represents the change in absolute terms of reducing the estimated post-release mortality of Atlantic white marlin from 35 percent overall on J-hooks to approximately 12 percent overall on circle hooks (35 percent − 12 percent = 23 percent). The 65.7 percent figure represents the relative decrease in post-release mortality between J-hook and circle hook caught Atlantic white marlin (23 percent/35 percent = 65.7 percent).

Comment 45: NMFS received a number of comments opposing preferred alternative E3, which would require the use of non-offset circle hooks by HMS permitted fishermen participating in billfish tournaments when using natural baits, including: we support the voluntary use of circle hooks and oppose mandating use of circle hooks in tournaments when using natural baits; if NMFS lets the recreational and charter/headboat fleet implement circle hooks on a voluntary basis, there will be 90 percent or better compliance at using circle hooks in a year or two; all south Florida tournaments have already voluntarily converted to circle hooks because they work, NMFS should ask tournament directors to add 5 extra points to anglers who used circle hooks to catch their fish; the number of fish saved will be ten times greater with the voluntary use of circle hooks rather than mandatory use, because the public does not like to be forced into doing things; individual tournaments should be allowed to determine which type of hook is most appropriate for their own needs; we agree with NMFS that promoting circle hook use in tournaments will result in non-tournament anglers using them also, however it should not be required by regulation. Anglers will ignore the circle hook requirement at tournaments and will choose the best tackle to win. The blue marlin fishery is a mixed fishery and circle hooks do not work well on other tournament species such as wahoo; enforcing circle hook requirements will be difficult or impossible, especially at tournaments; circle hooks need to be phased in through angler education, because they are not enforceable at this time with no proposed specifications; NMFS should educate anglers on the use and benefits of circle hooks. NMFS needs to provide specifications on circle hooks (offset, circularity, shank length, size, gap, etc.) before requiring them; I do not want NMFS to advocate one hook manufacturer over another; NMFS needs written specifications that are clear to everyone in order to encourage compliance; circle hooks could potentially have huge negative economic impacts on tournaments. They may decrease anglers' ability to catch non-billfish species that are landed for food or tournament winnings and as such may decrease willingness to participate in tournaments. This commenter also noted that the transition to circle hooks may require anglers to invest between $15,000 and $20,000 in the way they fish tournaments; potential adverse economic impacts of implementing circle hooks may outweigh the conservation benefits derived from anticipated decreases in post-release mortality and as such other areas of conservation should be explored; anglers need to use J-hooks with artificial lures because of the way marlin feed; circle hooks do not work well for species that are trolled for at higher speeds; fish do not get gut hooked with J-hooks and artificial bait. Anglers need natural bait with circle hooks because the use of circle hooks for marlin fishing with lures will not work. Marlins smack the live bait with circle hooks and will get hooked in the mouth or bill so there is very little chance of gut hooking anything; the best way to catch them (blue marlin) is to

slow troll natural bait with no drop back. Circle hooks may not work without a drop back; and, I oppose Alternative E3 because it falls short of what is needed.

Response: NMFS disagrees that there will be significantly greater use of circle hooks by anglers in the Atlantic billfish fishery if circle hook use remains voluntary, as opposed to being required under certain circumstances. Circle hook use has always been voluntary, and yet significant portions of the fishery continue to use J-hooks. Further, NMFS has been actively encouraging the use of circle hooks in HMS Fisheries since 1999. NMFS advocated circle hook use through the placement of articles on circle hooks, held discussions with industry leaders to encourage their use and to educate anglers on their benefits, recommended their use during public hearings and elsewhere, and encouraged circle hook use in tournaments by providing monetary incentives to anglers for their use. While there has been some progress in sectors of the fishery, anecdotal evidence suggests that substantial portions of the fishery continue using J-hooks as the standard hook. For several reasons, NMFS has selected the alternative to require non-offset circle hooks to be used by anglers aboard HMS permitted vessels participating in billfish tournaments when deploying natural baits. There are substantial conservation benefits associated with the use of circle hooks, primarily reduced post-hooking mortality. This is especially important because recent information suggests that the post-release mortality rate of Atlantic white marlin caught recreationally on J-hooks is substantially higher than previous estimates. In addition, there are data indicating that the mortality contribution of the recreational community on Atlantic white marlin may equal or exceed that of the pelagic longline fishery in some years, and circle hook requirements are already in place for that fishery.

As discussed in the response to Comment 41 regarding enforcement of circle hook use in tournaments, NMFS believes that given the vested financial interests of billfish tournament participants in ensuring that all tournament participants compete fairly under the same rules and conditions, tournament circle hook requirements would be significantly self-enforced. A general definition of ''circle hook'' is included in the current Federal regulations governing Atlantic HMS, and NMFS understands the desire of tournament operators for additional circle hook specifications. However, as there are no standard industry hook specifications, NMFS cannot provide detailed hook specifications for each size circle hook that could be used in the recreational billfish fishery at this time. NMFS is continuing to work on various definitions of circle hooks that could be applied in future rulemakings. Further, to ease concerns of anglers and simplify hook choice, NMFS is considering working with hook manufacturers to ensure that all hooks marketed as circle hooks are true circle hooks. NMFS disagrees that implementation of circle hook requirements will cause large adverse economic impacts. NMFS has not seen evidence that participation in the fishery will decrease as a result of circle hook use. Circle hooks have been shown to increase catch rates of some billfish and are, on average, slightly less expensive than J-hooks. Many commenters suggested that if circle hook use were left voluntary that compliance rates will be very high. NMFS agrees that circle hooks may affect the catches of some non-HMS species, but cannot predict whether these catches may increase or decrease. However, circle hooks will only be required on HMS permitted vessels participating in billfish tournaments when natural baits or natural bait/artificial lure combinations are deployed. Based on public comment during scoping and an examination of post-release mortality data of blue marlin caught on J-hooks, NMFS will allow anglers on HMS permitted vessels in billfish tournaments to continue to use J-hooks with artificial lures. NMFS remains convinced that implementing non-offset circle hook requirements in Atlantic billfish tournaments when natural baits or natural bait/artificial lures are deployed from permitted HMS vessels will be an important and productive first step that should reduce mortality in the U.S. directed billfish fishery.

Comment 46: I am concerned that alternative E3 specifies circle hooks for ''all Atlantic billfish tournament participants'' rather than ''HMS-permitted vessels in all Atlantic billfish tournaments.''

Response: NMFS agrees. NMFS has made a technical clarification to the wording of the alternative to correct any misperceptions. NMFS did not intend that the regulations contained in 50 CFR part 635 would apply to fisheries under the jurisdiction of the regional fishery management councils. NMFS analyzed this alternative from the perspective of applying circle hook requirements only to HMS-permitted vessels. To clarify, NMFS will require circle hook use only by anglers fishing from Atlantic HMS permitted vessels participating in Atlantic billfish tournaments when deploying natural bait or natural bait/artificial lure combinations.

Comment 47: NMFS received a number of comments in support of preferred alternative E3, Effective January 1, 2007, limit all Atlantic billfish tournament participants to using only non-offset circle hooks when using natural or natural bait/artificial lure combinations, including: I support alternative E3, which would require circle hooks in Atlantic billfish tournaments; the results of recent circle hook studies are very compelling; NMFS should make a tough decision and implement circle hooks because they work; circle hooks can help with catch and release by reducing post-release mortality; NMFS must reduce mortality on marlin and should require circle hooks; limiting tournaments to circle hooks should reduce post-release mortality and provide additional conservation to billfish in the recreational fishery. Mandatory use is viable in the tournament setting. Outside of tournaments, NMFS needs an aggressive education program to promote the use of circle hooks; it is easy to get a circle hook back, and circle hooks have the benefit of not leaving any gear on the fish; circle hooks work, save fish, and result in less hooking trauma; I support the use of circle hooks, but they may not work with combination baits; our club adopted the use of circle hooks exclusively for all our tournaments, and we generally have a short ten to 15 minute release time on sailfish and white marlin, which minimizes stress on the animal; we support alternative E3, non-offset circle hooks with dead or live natural baits in tournaments, but a circle hook needs to be clearly defined; circle hooks should be mandatory for billfish tournaments; I support the mandatory use of circle hooks in billfish tournaments because it is enforceable. Tournament directors can give out hooks or inspect them; Tournaments are a good place to start implementing circle hooks; there is an international movement to use circle hooks; the U.S. needs to put circle hook requirements on paper to show ICCAT our commitment and credibility, rather than doing this voluntarily; the international focus needs to be on improving the post-release mortality of Atlantic billfish and requiring circle hooks in U.S. fisheries will help with this effort; and, the recreational sector claims they are not ready for circle hooks, but the commercial sector was forced to move to circle hooks.

Anything that can be done to reduce mortality is good. The commercial fishing sector has stepped up to the plate, so the recreational community should do the same.

Response: NMFS agrees with comments suggesting that implementing circle hook requirements in tournaments will reduce post-release mortality of billfish caught in tournaments, and should help reduce the overall fishing mortality rate of Atlantic marlins. Recent data indicate that switching to circle hooks could reduce post-release mortality rates for individual fish by approximately two-thirds. NMFS also agrees with comments indicating the mandatory circle hook use in tournaments will be viable and enforceable for the reasons discussed in the response to Comment 41. NMFS also concurs with the need to continue educational efforts to better educate anglers in the use and benefits of circle hooks, as noted by some commenters, and encourages anglers to minimize fight times, release fish quickly, and to release fish in a manner that maximizes the probability of survival to further minimize billfish mortality. NMFS agrees with commenters who suggest that there is growing international momentum to use circle hooks in various fisheries. However, NMFS sees a need for continuing pressure on the international community to implement circle hook use more rapidly. As discussed in the response to Comment 46, a general definition of circle hooks is included in the current Federal regulations governing Atlantic HMS, and NMFS understands the desire of anglers and tournament operators for additional circle hook specifications. However, an index of detailed hook specifications for each size of circle hook that could be used in the recreational billfish fishery is not available at this time. NMFS is working on definitions of circle hooks that could be applied in future rulemakings. Further, to ease concerns of anglers and simplify hook choice, NMFS is considering working with hook manufacturers to ensure that all hooks marketed as circle hooks are true circle hooks. Implementing circle hook requirements in portions of the domestic recreational billfish fishery will demonstrate to the international community the conservation benefits of these hooks, and the commitment of the U.S. to billfish conservation. Improving post-release mortality in both the commercial and recreational fisheries is a critical component of halting the current decline of Atlantic marlin populations. NMFS agrees that the commercial fishing sector is subject to a number of restrictions to reduce bycatch and bycatch mortality. However, with regard to the hook requirements analyzed in this rulemaking, NMFS believes that the data indicate that circle hooks can reduce post-release mortality in the recreational billfish fishery.

Comment 48: NMFS received a number of comments conditionally supporting implementation of circle hooks in billfish fisheries, including: the use of circle hooks should be voluntary until NMFS develops a specification on the off-set and shank length; we support alternative E3, circle hooks in tournaments, provided it includes provisions to conduct cooperative scientifically valid research, determine and specify minimum design specifications for circle hooks, require the handling and release equipment be on board, and allow for voluntary participation in handling and release workshops. The current definition for a circle hook is not adequate. Rather, NMFS needs to outline minimal design specifications as was done in the NED experimental design; and, if voluntary conversion to circle hooks is low, then I would support their mandatory use.

Response: As discussed fully in Chapter 4 of the Final Consolidated HMS FMP and in the response to Comment 45 above, NMFS believes it is appropriate to require circle hooks for HMS permitted vessels when participating in Atlantic billfish tournaments at this time, despite a lack of detailed circle hook specifications. NMFS is continuing to develop more detailed circle hook specifications, but believes that the conservation benefits derived from circle hook requirements at this time outweigh any possible adverse impacts that may result from a lack of detailed circle hook specifications. NMFS has not considered or proposed any restrictions on scientific research in the Final Consolidated HMS FMP. Interested parties may conduct scientific research as appropriate under the selected circle hook alternative. Should the design of such scientific research call for utilizing gears or undertaking activities prohibited by regulation, interested parties may apply for either an Exempted Fishing Permit or Scientific Research Permit, as appropriate. Requiring handling and release equipment and workshops for the recreational sector is beyond the scope of this rulemaking, but may be considered in a future rulemaking, if appropriate. NMFS has selected an alternative requiring mandatory shark identification workshops for federally permitted shark dealers, as well as mandatory protected resources identification and release and disentanglement workshops for longline and gillnet vessel owners and operators. However, to the extent possible, these workshops will be open to other interested parties, including recreational fishery participants. As previously discussed, NMFS is unable to determine what percentage of billfish trips deploy circle hooks. However, the Agency believes that the data clearly demonstrate significant conservation benefits can be derived from the use of circle hooks in portions of the recreational billfish fishery.

Comment 49: NMFS received comments regarding the timing of implementing possible circle hook requirements suggesting the need for a short phase-in of circle hooks into tournaments and the recreational fishery and advance notice of impending circle hook regulations to allow for changes in the rules and advertising, and to inform tournament participants of potential circle hook requirements. Commenters also suggested that educational efforts should be increased to promote and enhance the growing recreational awareness, and use, of circle hooks.

Response: NMFS surveyed a number of tournament operators in the Atlantic, Gulf of Mexico, and Caribbean to better understand various aspects of tournament operations. NMFS determined that a delayed date of effectiveness of between four and six months would likely provide adequate time for tournament operators and participants to adjust tournament rules, formats, and advertising, as necessary, as well as to notify anglers of changes, and allow anglers to adjust fishing practices and take other steps, as appropriate, to minimize any potential adverse impacts stemming from selected circle hook requirements. As such, given the publication of this Final Rule in September 2006, the effective date for the selected circle hook alternative is January 1, 2007. This effective date is consistent with the effective date proposed for preferred alternative E3 as contained in the Draft Consolidated HMS FMP. NMFS has also had a circle hook public education program in place for a number of years to educate anglers and encourage the use of circle hooks in recreational fisheries.

Comment 50: Why would the recreational fishery not be allowed to have offset hooks, while the PLL fishery can have a 10 percent offset?

Response: Pelagic longline circle hook and bait requirements were developed to specifically address bycatch and bycatch mortality of Atlantic sea turtles, while the selected circle hook

requirements for Atlantic HMS permitted fishermen participating in Atlantic billfish tournaments are intended to reduce post-release mortality of Atlantic billfish. In other words, they were developed to address different issues. The pelagic longline fishery may only possess circle hooks offset up to 10 degrees if they are 18/0 or larger in size. The offset was determined to be necessary to allow the use of large baits (e.g. whole Atlantic mackerel), which can shield the hook. The recreational billfish fishery typically uses significantly smaller hooks (sizes 8/0 and 9/0), which, if offset, may diminish the conservation benefit of circle hook requirements by resulting in higher rates of deep hooking and soft tissue damage to vital organs.

Comment 51: NMFS received comments on the potential applicability of circle hook requirements of preferred alternative E3, which would require billfish tournament participants to use non-offset circle hooks when deploying natural baits, including: would participants in tournaments that offer prizes for both billfish and non-HMS species be required to use circle hooks for the non-HMS species; and would the circle hook requirement apply to vessels fishing in U.S. waters, or to all U.S. flagged vessels everywhere?

Response: Anglers aboard HMS permitted vessels, or vessels that are required to be permitted, and are participating in Atlantic billfish tournaments will be required to use non-offset circle hooks when deploying natural baits and natural bait/artificial lure combinations. However, HMS permitted vessels participating in Atlantic billfish tournaments will be able to deploy J-hooks on artificial lures. Circle hooks will be required for U.S. flagged vessels possessing an HMS permit and participating in an Atlantic billfish tournament regardless of where that vessel is fishing.

Comment 52: NMFS received a number of comments and suggestions on potential gear and bait restrictions or policy programs beyond those analyzed in the Draft Consolidated HMS FMP, including: there should be no live bait fishing; prohibit the use of ''live bait'' in all HMS J-style hook fisheries and areas known to have billfish interactions; the use of kites and offset circle hooks may be more damaging than J-hooks; NMFS should allow only one hook per lure to reduce foul hooking and injuries to the fish and anglers; NMFS should implement minimum line test requirements during the season or in tournaments; NMFS should create a buyback program for J-hooks; and, it would be useful to convene a summit of HMS tournament directors to work on a protocol to get anglers to switch to circle hooks.

Response: NMFS appreciates the thoughtful and creative suggestions made by commenters to address billfish issues. Although these ideas were not specifically considered in the Draft Consolidated HMS FMP, NMFS is investigating their potential and may consider them in a future rulemaking if appropriate.

Comment 53: NMFS received a number of questions specific to tournament landings of billfish in South Carolina, including: how many billfish are caught annually in South Carolina tournaments? What is the number harvested for weigh-in versus the number released? What is the estimated mortality for those released? What is the financial gain to the state?

Response: An examination of the Recreational Billfish Survey (RBS), which records tournament landings, indicates that an average of four Atlantic billfish (blue marlin, white marlin, and sailfish) were landed in South Carolina in tournaments annually for the period 1999 - 2004, inclusive. A high of seven blue marlin were landed in tournaments in South Carolina in 1999, and a low of one blue marlin was landed in 2002. In total, for the period 1999 - 2004, 25 billfish were retained and 73 were released in tournaments, as reported through the RBS. According to RBS data, between seven and eight (7.6) tournaments per year were conducted in South Carolina. Rounding-up to an estimate of eight tournaments per year, and applying an average value of $1,375,481 per tournament, the estimated impact of tournaments to coastal South Carolina equates to $11,003,848.

The commenter also indirectly suggested that the alternatives selected to address billfish mortality would result in the cancellation of South Carolina's tournaments resulting in a estimated loss of $11 million dollars to the state. NMFS does not agree with this suggestion. Circle hook requirements are not expected to result in decreased tournament participation, given the high catch and release rate practiced by billfish anglers, the fact that all U.S. Atlantic billfish tournament anglers will have to abide by the same circle hook requirements, the low number of marlins that are annually landed in South Carolina, and because marlin are available for landing. South Carolina tournaments are not likely to be affected by the 250 fish marlin landing limit either, primarily because all South Carolina tournaments occur prior to the date at which any potential estimated impacts are projected to occur (August 22), based upon the assumptions described in Chapter 4 of the Final Consolidated HMS FMP.

iv. Circle Hooks and/or Post-Release Mortality Data

Comment 54: NMFS received several comments on the adequacy of some of the studies cited in development of the Draft Consolidated HMS FMP, including: the Horodysky and Graves study is flawed because it is based on a sample size of only 40 fish and because they landed the fish in 30 - 40 minutes which is unreasonable. Most anglers will land their fish much more quickly in 5 - 10 minutes thus reducing stress on the fish and increasing survival rates; the Horodysky and Graves study concludes that there is a 35 percent greater likelihood that a white marlin will survive release if taken on a circle hook, rather than a J-hook. Other factors resulting in post-release mortality must come into play; e.g., no one would expect fish fought for 83 minutes ((DR02–04) or 46 minutes (VZ03–11)) to survive and it has nothing to do with the type of hook used. Yet, the study takes into consideration nothing but the type of hook used to conclude that hook type alone results in a lower mortality rate; one of the circle hook studies cited in the DEIS is problematic because it was conducted in the Pacific Ocean (Guatemala), the vessel's captains were required to use offset circle hooks rather than non-offset circle hooks, the methods do not represent how fishermen fish, and the study does not contain a comparison of circle hooks versus J-hooks.

Response: NMFS appreciates the concerns expressed over the methods and/or validity of the studies cited in the Draft and Final Consolidated HMS FMP. Nevertheless, the studies cited in Final Consolidated HMS FMP have been peer-reviewed and constitute the best available science regarding the topics under discussion. NMFS would appreciate additional relevant peer-reviewed studies on these subjects if the commenter is aware of any such studies because the Agency is always searching for, and required to utilize, the best available scientific information for fishery management actions.

Comment 55: NMFS received a number of comments that recommended research and data collections, or asked about the availability of certain data, including: we recommend research to determine the impacts of circle hooks on catch rates, not only of billfish, but other species such as dolphin, wahoo, and tuna; NMFS should conduct studies on the post-release mortality of sailfish

with circle versus J-hooks in the Atlantic Ocean. Do not rely on studies from the Pacific Ocean because the sailfish are different between the oceans; more data from pop-up satellite (PSAT) tags and angler experience is needed to provide a foundation for any major change in regulations pertaining to marlins; has there been any research on exhaustion mortality, e.g., fighting fish for different times on different gear (drop back, hook type, etc) and the resultant impacts on mortality?; we see big blue marlin occasionally and are wondering about post-release mortality and catch-and-release rates. Predation should be considered in estimating post-release mortality; NMFS should conduct additional studies to identify more effective ways for the pelagic longline fishery to reduce bycatch of marlin and sharks; NMFS should evaluate the impacts of using ''live bait'' and circle-style hooks as well as careful handling and release tools and procedures; and, NMFS should further investigate how the feeding and behavior of Atlantic blue marlin may affect catch rates with circle hooks.

Response: NMFS appreciates these research recommendations as a way to help guide future research efforts and funds. The Agency is always looking for, and appreciative of, relevant research suggestions and additional data that can benefit the management of Atlantic HMS. The answers to many of the research suggestions could potentially benefit management. Some of the research suggestions contributed by commenters are currently under investigation by either NMFS or private sector entities. NMFS will consider these suggestions in the future, as appropriate.

Comment 56: Off-set circle hooks show less mortality than non off-set circle hooks.

Response: NMFS is unaware of data showing off-set circle hooks result in a lower mortality rate than non-offset circle hooks. NMFS would appreciate receiving any such data that may support this contention, and will consider it in future rulemakings, as appropriate.

Comment 57: The Agency has not published specifications for circle hooks and I am requesting clarification of the definition of ''non-offset circle hooks'' by NMFS because, in part, each manufacturer creates its own definition for non-offset circle hooks.

Response: A general definition of circle hooks is included in the current Federal regulations governing Atlantic HMS, and NMFS understands the desire of tournament operators for additional circle hook specifications. The current definition of ''circle hook'' in 50 CFR 635.2 reads: ''A circle hook means a fishing hook originally designed and manufactured so that the point of the hook is turned perpendicularly back toward the shank to form a generally circular or oval shape.'' NMFS is working on definitions for circle hooks. At this time, however, detailed hook specifications for each size circle hook that could be used in the recreational billfish fishery are not available. There are no standard industry hook specifications. As detailed in the discussion of the selected circle hook alternative in Chapter 4 of the Final Consolidated HMS FMP, NMFS finds that it is appropriate at this time to require the use of non-offset circle hooks in portions of the recreational billfish fishery to reduce post-release mortalities in the recreational billfish fishery. Further, to ease concerns of anglers and simplify hook choice, NMFS is considering working with hook manufacturers to ensure that all hooks marketed as circle hooks are true circle hooks.

Comment 58: The Maryland Department of Natural Resources submitted a comment indicating that they would be willing to work with NMFS to teach voluntary use of circle hooks, noting that anglers must learn how to fish these hooks and that education for the offshore fishermen is necessary.

Response: NMFS appreciates the State of Maryland's willingness to work with the Agency to reach out to anglers and educate them on the use of circle hooks. Circle hooks have been shown to effectively reduce post-release mortality of many species while having little impact on rates of catch. The Agency hopes that the offer by the State of Maryland will remain open given the mandatory circle hook requirements for tournaments in this rule.

Comment 59: NMFS's statement in the Draft Consolidated HMS FMP that increases in recreational fishing effort and stable fishing mortality indicate that white marlin are decreasing in number is incorrect. Fishing mortality has not increased, the recreational fishing community is releasing more of them.

Response: NMFS was unable to locate this statement in the Draft Consolidated HMS FMP. However, NMFS believes that the commenter may have intended to state that increases in recreational fishing effort and stable landings of white marlin indicate that white marlin may be decreasing in number. The number of recreationally landed Atlantic white marlin reported to ICCAT between 2001 and 2004 varied considerably, ranging from a high of 191 in 2002 to a low of 23 in 2003. The number of Atlantic white marlin reported to NMFS via the Recreational Billfish Survey has remained relatively stable over the same period. However, the release rate of live Atlantic white marlin in the recreational fishery has also remained stable. In the face of increased effort, a lack of increases in landings, when coupled with stable release rates, implies decreased angler success. Decreased angler success could be attributable to a number of factors. One factor could be that the fishing mortality rate of Atlantic white marlin is more than eight times higher than the population can sustain, so the stock size is diminished. Furthermore, as discussed in Chapter 4 of the Final Consolidated HMS FMP, the current estimate of recreationally caught Atlantic white marlin post-release mortality is now significantly higher than previous estimates, so an increase in the number of releases would be anticipated to result in additional mortalities.

Comment 60: Six to ten thousand white marlin are caught each year by U.S. fishermen, both commercial and recreational. I have data showing that commercial mortality is higher than recreational mortality in general, but in the past 6 years, the recreational mortality has exceeded the commercial mortality.

Response: New post-release mortality estimates allowed NMFS to examine total mortality contributions of the commercial and recreational sectors for Atlantic white marlin over the past four years. Mortality varies greatly by year and data set. In some years, using some data sets, the recreational mortality contribution appears to exceed the commercial mortality contribution and in some years the reverse appears to be true. Please see Appendix C in the Final Consolidated HMS FMP for more detailed information by year and fishery sector. Appendix C provides a range of mortality estimates, but does not attempt to definitively identify mortality contributions, rather, the estimates provided in that table are intended to provide reference points for discussion. NMFS will continue to examine this issue as new and refined data become available.

v. Elimination of the ''No Sale'' Exemption

Comment 61: The ''no sale'' exemption for Atlantic billfish should be removed. The sale of all billfish in the U.S. should be prohibited.

Response: NMFS agrees that the exemption to the no sale provision for Atlantic billfish should be removed.

However, NMFS does not agree that the sale of all billfish, including those from Pacific stocks, should be prohibited. Stock status of Pacific billfish is currently unknown, and as such a nation-wide ban on the sale of billfish may not be appropriate. The Certificate of Eligibility program in place for Atlantic billfish is designed to ensure that no Atlantic billfish enter the stream of commerce, while allowing Pacific billfish to be sold legally. However, the Agency may reconsider a prohibition on the sale of Pacific billfish in the future, as necessary and appropriate.

Comment 62: The potential ecological impact of billfish sales from fishermen in Puerto Rico would be minimal because the individuals who may sell Atlantic billfish take only 10 - 15 fish a year, and only keep fish that come to the boat dead in an effort to minimize waste.

Response: NMFS has little data on the extent of illegal sales of billfish in Puerto Rico and cannot verify the veracity of the commenter's claims or assess the impact of these sales. NMFS has received a significant number of anecdotal reports of sales of Atlantic marlin in Puerto Rico. The number of these anecdotal reports suggests that a sizable number of Atlantic marlin may be illegally sold and implies that more fish than just those that come to the boat dead are illegally entered into commerce.

Comment 63: The sale of billfish is legal outside of the U.S. Do foreign vessels fishing in waters of the U.S. need to obtain U.S. fishing permits and abide by U.S. regulations?

Response: Foreign commercial vessels are not allowed to fish in waters of the U.S. unless there is an international fishery agreement or some other specific authorization under the Magnuson-Stevens Act for such activity. Such vessels would be subject to permit requirements and other statutory and regulatory provisions. Foreign fishing vessels which are not operated for profit may engage in recreational fishing in U.S. federal and state waters. However, the vessels must obtain the requisite permits (e.g., HMS Angling permit and/or any state permits) and comply with all applicable federal and/or state laws. Since the 1988 Atlantic Billfish FMP, the U.S. has prohibited commercial retention of billfish.

Comment 64: How many comments were received from Puerto Rico on the proposed removal of the no sale exemption for billfish?

Response: No comments from Puerto Rico directly addressed removal of the no sale provision. However, one commenter from Puerto Rico requested increased law enforcement at establishments that may illegally sell Atlantic billfish, such as restaurants. NMFS interprets this comment to be supportive of prohibiting sale of Atlantic marlin. Further, the Caribbean Fishery Management Council adopted a motion supporting elimination of the exemption to the no-sale provision in August of 2005.

vi. General Billfish Comments

Comment 65: The proposed Atlantic billfish alternatives are in direct conflict with the 1988 Billfish FMP and the 1999 Billfish FMP Amendment's stated objective of ''Maintaining the highest availability of billfishes to the United States recreational fishery by implementing conservation measures that will reduce fishing mortality.''

Response: NMFS disagrees. The Atlantic billfish provisions in this rule are consistent with the stated objective of maintaining the highest availability of billfishes to the U.S. recreational fishery by implementing conservation measures that will reduce fishing mortality. Recent studies by Cramer (2005) and Kerstetter (2005–in press) and analyses in the Final Consolidated HMS FMP indicate that recreational fishing activities contribute significantly to Atlantic billfish mortality. Because biomass levels of both Atlantic blue and white marlin are currently low, it is imperative for NMFS to implement conservation measures for the domestic recreational Atlantic billfish fishery to reduce post-release mortality and better ensure the highest, long-term availability of these important species to the United States recreational fishery. The selected management measures, specifically the requirement to utilize non-offset circle hooks when deploying natural bait in billfish tournaments, is an important step towards accomplishing this objective.

Comment 66: NMFS must determine the sustainable biomass for spearfish and sailfish independently, as soon as possible.

Response: NMFS does not conduct its own assessments for spearfish and sailfish. Due to the highly migratory nature of these species, stock assessments are conducted by the Standing Committee on Research and Statistics (SCRS) of ICCAT. The last assessment for sailfish was conducted in 2001. In that assessment, the SCRS expressed concern about the incomplete reporting of catches, lack of sufficient reports by species, and evaluations of new methods used to split the sailfish and spearfish catch and to index abundance. The SCRS recommended that all countries landing sailfish/spearfish, or having dead discards, report these data to the ICCAT Secretariat. The SCRS also indicated that it should consider the possibility of a spearfish ''only'' stock assessment in the future.

Comment 67: I support decreasing the mortality on Atlantic billfish as much as possible, the focus of billfish management has to be on post-release mortality.

Response: This rule, which will require the use of non-offset circle hooks with natural bait in billfish tournaments by HMS permitted vessels, is intended to reduce the post release mortality of Atlantic billfishes. A recent study by Horodoysky and Graves (2005) has shown that circle hooks can reduce post-release mortality on white marlin by as much as 65 percent, when compared to J-hooks.

Comment 68: Billfish conservation is an international problem, and the focus has to be international.

Response: NMFS agrees that billfish conservation is an issue that must be addressed at the international level. Nevertheless, given the low biomass levels of Atlantic blue and white marlin, and the importance of these species to the domestic recreational fishery, it is necessary to implement measures to reduce post-release mortality to the extent practicable in the domestic recreational Atlantic billfish fishery. The U.S. will continue to vigorously pursue international agreements at ICCAT to reduce billfish mortality levels caused by foreign fishing vessels.

Comment 69: NMFS should designate all marlin, spearfish, sailfish, and sharks as catch-and-release species, and allow fishing for these species only with rod and reel and circle hooks.

Response: In the Draft Consolidated HMS FMP, NMFS proposed a prohibition on landings of Atlantic white marlin. Although there was some support for this measure, many commenters indicated that a white marlin landings prohibition was unnecessary, and that it would produce significant adverse social and economic impacts. After much consideration, NMFS has decided not to select this alternative at this time. Many HMS recreational anglers already practice catch and release fishing for white marlin and other species. Furthermore, the commercial sale of Atlantic billfish is prohibited, landings of longbill spearfish are prohibited, and several shark species may not be landed. Strict quotas and other management measures based upon the best available scientific information govern commercial landings of most other shark species, while the recreational sector is required

to adhere to shark bag limits and minimum size restrictions. As a result, mandatory catch and release in the recreational sector may not be necessary at this time and prohibiting all commercial shark landings is not necessary. Domestically, the most important factor in conserving billfish is to improve their survival after the catch and release experience. This rule requires HMS permitted fishermen to use non-offset circle hooks when deploying natural baits in billfish tournaments. This measure will complement existing circle hook requirements in the commercial PLL fishery by reducing post-release mortality and contributing to the rebuilding of Atlantic billfish stocks.

Comment 70: The economic effects associated with the proposed billfish measures go far beyond the initial impacts that were analyzed in the Draft Consolidated HMS FMP.

Response: Economic impacts are a fundamental consideration in the Agency's decision making process. Oftentimes, however, the data are not sufficient to predict, for example, how recreational anglers might react to proposed management measures. If the measures change, would anglers switch to other species, quit fishing altogether, take fewer trips, or travel shorter distances? Each of these potential behavioral reactions would impart different economic impacts. One of the primary reasons for conducting public hearings and soliciting public comment is to obtain supplemental information on the analyzed impacts associated with proposed management measures. All written comments, as well as those received verbally at public hearings, were considered by the Agency in the selection of final management alternatives. NMFS will continue working to improve available social and economic data and analyses.

Comment 71: NMFS should require a Billfish Certificate of Eligibility to help improve compliance, facilitate enforcement and improve information on billfish shipments coming into the U.S.

Response: A Certificate of Eligibility for Billfishes is required under 50 CFR 635.31(b)(2)(ii), and must accompany all billfish, except for a billfish landed in a Pacific state and remaining in the state of landing. This documentation certifies that the accompanying billfish was not harvested from the Atlantic Ocean management unit, and identifies the vessel landing the billfish, the vessel's homeport, the port of offloading, and the date of offloading. The certificate must accompany the billfish to any dealer or processor that subsequently receives or processes the billfish. The certificate of eligibility helps to maintain the recreational nature of Atlantic billfish fishery, with no commercial trade.

Comment 72: NMFS received a number of comments from recreational fishery participants regarding pelagic longline fishing, its impact on billfish, and suggestions for new management measures that should be researched or implemented. The comments included: new data show that just under 65 percent of all white marlin caught as bycatch on pelagic longline vessels are dead, or die soon after being released alive; it makes absolutely no sense to close recreation fishing which kills less than 1 percent of the fish caught and allow commercial fishing which kills almost 100 percent of the billfish caught. The major source of billfish mortality (pelagic longlining) still has not been satisfactorily regulated to adequately protect these fish; the commercial pelagic longline fishery is causing the decline in billfish abundance; billfish were making a comeback until longline fishing of their prey species, dolphin and wahoo, was allowed. Our club used to tag and release 35 to 40 marlin per year. Now we see only five to six marlin tags and most of them are from the other side of the Gulf Stream; NMFS should limit the length of pelagic longlines; and, limit the number of hooks that pelagic longline fishermen are allowed to set, and require that pelagic longline vessels retrieve their gear every three hours to reduce billfish mortality.

Response: Many commenters stated that the recreational HMS fishery has only a minor impact on billfish populations relative to the commercial PLL fleet, and that additional management measures should be imposed upon the commercial PLL fleet rather than upon the recreational sector. To address this comment, NMFS examined data from the pelagic longline logbook program and the RBS, MRFSS, and LPS databases. New information on recreational and commercial post-release mortality rates (Horodysky, 2005, and Kerstetter, 2006, respectively), when combined with these databases, indicates that in some years, the total mortality contribution of the domestic recreational billfish fishery may equal or exceed the total mortality contribution of the domestic pelagic longline fleet for Atlantic white marlin. As described in Appendix C of the Final Consolidated HMS FMP, estimates of total annual recreational white marlin mortality (which combines landings, dead discarded fish, and estimated post-release mortalities) vary greatly by data set and year. MRFSS and LPS databases indicate that, for the period 2001 - 2004, inclusive, the aggregate level of recreational mortality was approximately three times and two times higher, respectively, than aggregate mortality contributions (dead discards and estimated post-release mortality) of the domestic pelagic longline fleet. Using RBS data, a known subset of recreational effort, estimated aggregate domestic recreational mortality appears to be about 71 percent of estimated total domestic pelagic longline mortality for the same period with regard to white marlin. When taken in combination, and in consideration of the limitations and uncertainties associated with each data base involved, two general conclusions can be drawn: (1) The aggregate domestic recreational fishing mortality contribution is higher than previously thought with regard to Atlantic white marlin; and (2) there is more parity between the mortality contributions of the domestic recreational and domestic pelagic longline fleets than previously thought. Cramer (2005) and Kerstetter (2006) also examined this same issue to varying degrees. Both papers support the same basic conclusion drawn in this Final Consolidated HMS FMP, that in some years, the domestic recreational billfish fishery may cause equivalent, or even greater, levels of mortality on Atlantic white marlin populations than the domestic pelagic longline fishery. This finding, which is contrary to widely held beliefs, appears to be the result of new data indicating higher post-release estimates for recreationally released white marlin and size differences between the two fisheries. Presently, the domestic commercial PLL fleet is regulated by a limited access permit program; observers; vessel upgrading restrictions; year-round and seasonal closed areas; ICCAT-recommended quotas; minimum size restrictions; circle hook requirements; bait restrictions; careful release protocols; mandatory logbooks; and a VMS requirement, among others. The recreational HMS sector is governed by an open access permit program; minimum size restrictions; reporting requirements for swordfish, BFT, and billfish; gear restrictions; a no-sale provision; and possession limits for swordfish, sharks and tunas, among others. The selected billfish management measures are intended to reduce recreational post-release mortality of white marlin, because current estimates are substantially higher than previously thought. NMFS will continue to evaluate the need for

additional management measures for both the domestic PLL fleet and the recreational HMS fishery. NMFS also recognizes that foreign commercial longline vessels contribute significantly to Atlantic billfish mortality, and will continue to pursue international agreements at ICCAT to reduce these levels.

Comment 73: NMFS would be negligent not to require mandatory tournament registration at this time; tournament registration should include all contests in which any prize, award and/or monetary exchange is made relating to the capture of Atlantic HMS; I support alternative E9, which would implement a mandatory HMS tournament permit, because monitoring and enforcement of HMS tournaments is necessary; HMS tournaments need to be permitted because we need reporting from them.

Response: NMFS currently requires that all tournament operators register any tournament awarding points or prizes for HMS with the HMS Management Division, at least four weeks prior to the commencement of the tournament. The regulations are being clarified to add that tournament registration is not considered complete unless the operator receives a confirmation number from NMFS. This clarification is expected to improve the HMS tournament registration process. In the Draft Consolidated HMS FMP an alternative to require a tournament permit was considered, but not further analyzed, because improvements to tournament registration, data collection, and enforceability can be achieved with less burden to the public and government by requiring a tournament confirmation number. Because HMS tournaments frequently change operators, names, and dates, a tournament permit would be burdensome to administer and enforce. NMFS believes that requiring a tournament confirmation number, issued by the HMS Management Division, will accomplish the same objective (i.e., increased compliance) as a tournament permit would.

Management Program Structure

A. BFT Quota Management

Comment 1: NMFS received a number of comments on the management of the purse seine sector of the Atlantic BFT fishery. These comments consisted of: BFT fisheries need every opportunity to harvest the quota and not addressing the large medium tolerance limits imposed on the purse seine sector in this rule is disappointing; the Purse Seine category should be allowed to fish throughout the year provided quota is available; and the purse seine BFT fishery needs to become a ''true'' individual transferable quota (ITQ) fishery and thereby not addressing the ability to transfer purse seine quota outside the category is disappointing. Some comments stated that the Purse Seine category should be eliminated from the BFT fishery or purse seine vessels should be limited in the areas they fish to minimize any potential gear conflicts with commercial and recreational handgear vessels.

Response: During this rulemaking, NMFS received many comments regarding management issues in the BFT fishery in general and the purse seine sector in particular. Many of these comments arise from recent issues regarding the status of BFT, underharvests in recent years, and current size and trip limits. ICCAT is conducting a stock assessment this summer that should provide additional information regarding the status of BFT and the current rebuilding plan. In November 2006, ICCAT may recommend new management measures for BFT. In addition to any future ICCAT recommendations for BFT, NMFS intends to conduct a rulemaking regarding all HMS permits that could include, among other things, further rationalizing some segments of the HMS fisheries, streamlining or simplifying the permitting process, restructuring the permit process (gear-based, species-based, or both), reopening some segments of the limited access system to allow for the issuance of additional permits, modifying when permits are renewed (fishing year or birth month), and considering dedicated access privileges (e.g., individual transferable permits). This future rulemaking may be better suited to address the entire range of purse seine comments that were received during this rulemaking.

Comment 2: NMFS received a few comments regarding PLL in general and the incidental catch of BFT by PLL including: the effectiveness of the June PLL closure should be reevaluated in light of circle hook catch data; the PLL fishery should be afforded a greater opportunity to catch its targeted species of swordfish, allowable tunas, and sharks, especially considering the existing protections for BFT in the GOM and Florida East Coast, as well as 100 percent circle hooks, careful handling and release tools, and certified training; NMFS should take incremental steps to ensure that the Incidental Longline category fully utilizes its domestic BFT allocation in order to reduce dead regulatory discards to the maximum extent feasible within this category's allocation; due to the overall underharvest of U.S. Atlantic BFT quota, NMFS should cautiously relax the incidental catch criteria to reduce/eliminate regulatory discards and effectively utilize this category's quota.

Response: NMFS thoroughly analyzed the incidental catch requirements of BFT by PLL vessels and published a final rule on May 30, 2003 (68 FR 32414), that substantially revised the management scheme for this incidental bycatch of BFT. NMFS continues to gather information regarding the effectiveness of incidental harvest restrictions, as well as the effectiveness of all bycatch reduction measures that have been implemented in the PLL fishery. In addition, as more information becomes available, NMFS will reevaluate which measures, if any, it may be appropriate to add, modify, reduce, and/or remove all together.

Comment 3: NMFS received two comments regarding rebuilding of the Western Atlantic BFT stock. These comments consisted of: Agency efforts should be more focused on the international BFT issues to be effective in rebuilding the stock; and, BFT stocks should be rebuilt by preventing the commercial interests from overfishing.

Response: NMFS agrees that international cooperation is critical to rebuilding the BFT stocks. The U.S. has been at the forefront of efforts to develop appropriate rebuilding plans that balance biological and socio-economic imperatives and will continue to press the international community to implement appropriate measures to rebuild Atlantic BFT stocks. ICCAT recommended the current U.S. BFT TAC based on the 1998 stock assessment for the Western Atlantic BFT stock and the rebuilding plan with the goal of achieving maximum sustainable yield within 20 years. Under the current rebuilding plan, the United States needs to maintain its allocation to prevent overfishing and contribute to rebuilding the stock. The U.S. quota is allocated to the commercial or recreational sector in accordance with the international rebuilding plan. In the past few years, all the commercial BFT categories have landed fewer fish than their allocations would allow for. Further, ATCA requires that no regulation promulgated under ATCA may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to which the U.S. agreed pursuant to a recommendation of ICCAT.

Comment 4: Are herring issues addressed in this document in terms of the impacts they are having on BFT?

Response: Atlantic herring, a food source for BFT, are currently managed under a separate fishery management

plan by the New England Fishery Management Council (NEFMC). The Atlantic herring fishery management plan is being amended. During a NEFMC meeting on January 31, 2006, the NEFMC approved a seasonal purse seine/fixed-gear-only fishery for the Western Gulf of Maine (Area 1A) from June 1 through September 31. The NEFMC's action recognizes the importance of herring in the Gulf of Maine ecosystem. In addition, NMFS recognizes the importance of considering ecosystem interactions in fishery management planning, and addresses ecosystem management as one of the goals of the NMFS Strategic Plan. The Agency continues to work toward integrating an ecosystem approach into fishery management practices.

Comment 5: Yellowfin tuna should not take a ''back seat'' to BFT, and NMFS needs to put more resources into yellowfin tuna data collection, analyses, and regulation.

Response: NMFS acknowledges the importance of yellowfin tuna to the U.S. fishing industry. The latest SCRS report indicates that the current fishing mortality rate for yellowfin tuna may be higher than that which will support maximum sustainable yield on a continuing basis. NMFS has taken a number of actions during, and since, the implementation of the 1999 FMP to address the management of YFT fisheries (e.g., imposing limited access on the longline and purse seine sectors of the fleet and implementing a recreational retention limit). By taking precautionary initiatives for conservation measures, the U.S. will have a stronger negotiating position at ICCAT if additional management measures become necessary. NMFS currently has reporting programs in place to collect commercial and recreational YFT data. This information, in turn, is provided to ICCAT and the SCRS to be compiled with other information from member nations to be used in assessing the YFT stock. Therefore, NMFS maintains that no further action regarding the YFT fisheries is necessary at this time. However, NMFS will continue to monitor the status of the YFT fisheries as SCRS has indicated that the yellowfin tuna stock is fully-exploited and will pursue future actions if warranted.

Comment 6: Does NMFS have the authority to close an area or region to BFT fishing via an inseason action?

Response: NMFS has the regulatory authority to provide for maximum utilization of the BFT quota by conducting various types of inseason actions. The inseason actions may consist of: increasing or decreasing the General category daily retention limits; adding or waiving Restricted Fishing Days (RFDs); increasing or decreasing the recreational retention limit for any size-class BFT or change a vessel trip limit to an angler limit and vice versa; transferring quota to/from any fishing category or to the Reserve; closing domestic quota categories when that quota is reached, or is projected to be reached; and, closing/reopening the Angling category BFT fishery by accounting for variations in seasonal distribution, abundance, or migration patterns of BFT, or catch rates in one area, which may have precluded anglers in another area from a reasonable opportunity to harvest a portion of the Angling category quota. The Angling category BFT fishery or part of the fishery may be reopened at a later date if it is determined that BFT migrated into the other area. NMFS must consider specific criteria prior to taking each type of inseason action. Currently, NMFS has multiple sets of criteria, each one designed for a specific type of inseason action, that are used in making a determination. However, in this rule, NMFS is consolidating those lists to make the inseason action determination process more transparent and consistent.

The end results of some inseason actions may be perceived as a closure of a certain geographic area. For instance, if NMFS were to implement a number of consecutive RFDs in the General category it will suspend fishing activities for that time period. NMFS also has the ability to implement an interim closure in the Angling category as described above in this response. An area closure for any other BFT category or a multi-year area closure for any BFT category will require a regulatory amendment, including public comment.

Comment 7: The SAFMC supports alternative F3(c), which would provide an opportunity for a winter BFT fishery. Further, the Council supported an equitable BFT quota allocation for the South Atlantic region (North Carolina southward), as well as any other actions that will ensure fishermen in all the South Atlantic states (North Carolina, South Carolina, Georgia, and Florida's East coast) have an opportunity to participate in this fishery. The SAMFC is concerned about the proposed January 1 starting date for BFT fishing because it will prevent underages from being carried over into the following January of the new fishing year. The ability to carry these underages forward can keep the fishery open through the month of January, which is critical to the fisheries south of North Carolina, off South Carolina, Georgia, and Florida.

Response: Currently, the last General category time-period spans the winter BFT fishery which usually begins in November and runs through the end of the General category season (at the latest on January 31). Under this rule, the current time-period of October through January and the associated subquota will be adjusted so that the later portion of the fishery will consist of three separate time-periods; October through November, December, and January. With the implementation of the calendar year/fishing year changes in this rule, the December and January time-periods will fall in separate fishing years. Fisheries were not active across fishing years prior to the 1999 FMP, which originally adjusted the BFT fishery from a calendar year to a fishing year spanning two calendar years. Under this rule, the annual baseline quota for the January time-period will be 5.3 percent of the coastwide General category quota. As indicated in Section 4.3.1.1 of the Final Consolidated HMS FMP, several options may be used to dispose of carryover of any under or overharvest during the December time-period. In the first alternative, any under or overharvest could be entirely rolled over into January of the following fishing year and added to the baseline 5.3 percent allocation. Under this scenario, the entire underharvest would be added to the January time-period subquota, or the entire overharvest would be subtracted from the time-period subquota. In another potential alternative, 5.3 percent of the under or overharvest may be applied to the January time-period in addition to the baseline 5.3 percent allocation. In a third alternative, no under or overharvest would be added or subtracted from the January time-period subquota. NMFS will work with the affected constituents through the annual BFT specification process to determine the most appropriate approach based on constituent needs and Federal regulatory requirements.

Comment 8: The allocations between domestic quota categories should be adjusted, specifically increasing the quota for the Angling category.

Response: The Agency did not consider a modification to the sector allocations in this action; therefore, a separate rulemaking and FMP amendment would be needed to increase the allocation to the Angling category. The original allocations reflect the sector's historical share of the landings during the 1983 through 1991 time period, and were codified as part of the 1999 FMP process.

Comment 9: NMFS received numerous comments for and against the adjustment of the General category time-periods and associated subquotas. Those comments in support of an adjustment include: September through December have been the strongest months for BFT fishing and these allocations should be increased; General category time-period subquota allocations should allow for a dependable winter BFT fishery according to the percentages in the North Carolina Department of Marine Fisheries (NCDMF) Petition for Rulemaking; General category time-period and subquota allocations should reflect the migration of the fish through a particular area; there needs to be a balance between flexibility and predictability; the General category should be split across 12 months of equal portions and any arbitrary closure date should be removed to allow full harvest of the quota; is there a biological reason we do not allow the General category BFT fishery to be prosecuted in the months of February through May; all selected alternatives should allow for the full utilization of the available quota so the U.S. can prove we have a stake in these fisheries. Vessels need to be able to catch fish and then make money off those fish to reinvest into the fishery in the following years as this is a sign of a healthy fishery; catching wild BFT throughout the year is in the best interests of U.S. fishermen and the U.S. should remove any arbitrary controls (e.g., seasonal closures) to allow for the harvest of U.S. quota; and, regardless of which alternative is selected, when the fishery converts back to the calendar year, a methodology needs to be developed to allow quota to carry forward from December into January, i.e., across years, in a timely fashion. In addition, there was broad support at the March 2005 AP meeting for revising the General category time-periods and subquotas to allow for a winter fishery, due to the slight increase in quota as well as on informal agreements between user groups and the Agency.

Comments in opposition of an adjustment include: the Agency needs to manage the BFT fishery in the traditional manner; and changing the General category time-periods and subquotas will have negative impacts on the traditional New England fishermen.

Response: This rule to amend the coastwide General category time-periods and their associated subquota allocations will strike a balance between formalizing a winter fishery, acknowledging recent trends in the BFT fishery, as well as recognizing the traditional patterns of the fishery. This rule will also allow for business planning throughout the entire General category season. In light of recent underharvests in the General category, NMFS is aware of the need to provide reasonable opportunities to harvest the General category quota, and how this relates to requests to extend the fishery throughout the year. However, as catch rates in the BFT fishery can increase quite dramatically in a short time period, there are concerns in allowing a fishery to emerge that may be unsustainable or cause overcapitalization on a species that is currently designated as overfished.

Comment 10: NMFS received comments both in favor of and opposed to the preferred alternative to establish General category time-periods, subquotas, and geographic set-asides via annual framework actions. The comment in favor stated the preferred alternative allows for a balance between flexibility and predictability in the General category BFT fishery. The comment opposed stated the overall BFT management program should not be modified.

Response: Annual regulatory framework actions will be used to establish and adjust the General category time-periods, subquotas, and geographic set-asides. This procedural change to the management of this category will expedite the process, providing the agency with greater flexibility to adapt to changes in the fishery and the industry with greater predictability in the management of the General category's upcoming fishing year. The General category will have consistent time-periods and subquota allocations from one year to the next unless ICCAT provides a new recommendation for the U.S. BFT TAC.

Comment 11: NMFS received a number of comments opposing the removal of the Angling category North/South dividing line and one comment supporting its removal. The comments include: the BFT North/South dividing line should be maintained as it was created to provide ''fair and equitable'' distribution of the BFT quota; it appears that the reason for removing the North/South line is not due to a lack of real time data, but because of participant noncompliance with the current call-in system; NMFS should devise a reliable real-time data collection system for recreational BFT landings; the funds used to support the current LPS program should be reallocated to implement tail tag programs at the state level, similar to North Carolina and Maryland; and the agency should develop more recreational set-asides to further ensure that recreational participants are provided an equitable opportunity to harvest a portion of the Angling category quota.

Response: NMFS has modified the selected alternative, F4, from the Draft Consolidated HMS FMP by removing the proposal to eliminate the North/South Angling category dividing line and thereby maintaining the status quo regarding this recreational management tool.

NMFS acknowledges the recreational fishery supports the North/South line for a variety of socio-economic reasons. Based on the social and economic impacts associated with the status quo alternative, NMFS prefers retaining the North/South line at this time. However, for this management tool to be most effective, NMFS requires real-time BFT landings data from the recreational sector. To date, compliance with the recreational Automated Landing Reporting System (ALRS) has been low, thus hindering the real-time effectiveness of this management tool. If compliance with the ALRS requirements increases or, as recreational catch monitoring programs are improved over time, the effectiveness of this management tool may increase.

Comment 12: NMFS received two comments regarding the clarification of the school size-class BFT tolerance calculation. One comment supported the selected alternative that will calculate the school size-class tolerance amount prior to accounting for the NED set-aside quota because it brings the calculation more in line with the ICCAT recommendation regarding school size-class BFT tolerances. The second comment stated there was no recreational input when the tolerance limit was implemented, and the tolerance limit should be 15- or 16–percent of the total quota.

Response: This rule will clarify the procedure NMFS uses to calculate the ICCAT recommended 8 percent tolerance for BFT under 115 cm (young school and school BFT), thus implementing the ICCAT recommendation more accurately based on the specific language contained in the recommendation. Regarding the comment stating a lack of recreational input in developing the 8 percent tolerance limit for the smaller size classes of BFT, ATCA authorizes domestic implementation of ICCAT-adopted management measures, and provides that no U.S. regulation may have the effect of either increasing or decreasing the quota or fishing mortality level adopted by ICCAT. ATCA also provides that not more than three Commissioners shall represent the United States in ICCAT. Of the three

U.S. Commissioners, one must have knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea. In addition, the U.S. Commissioners are required to constitute an Advisory Committee to the U.S. National Section to ICCAT. This body, to the maximum extent practicable, consists of an equitable balance representing the interests of various groups concerned with the fisheries covered by the Convention, including those of the recreational community.

Comment 13: NMFS received a number of comments for and against implementing a rollover limitation for each domestic quota category. Those in support of the limitation include: a rollover cap should be implemented, but the cap should be set lower because a rollover of up to 100 percent of a category's baseline allocation could be harmful to the fishery in future years as it will lead to unsustainable overcapitalization; and NMFS must develop a way to track size classes of BFT entering the Reserve category as a result of this cap, so there are no conflicts with overall mortality estimates.

Comments in opposition of the rollover limitation include: rollover of quotas should be eliminated to increase conservation; limiting the amount of quota that categories can roll over is not appropriate at this time; NMFS should not get ahead of ICCAT as it compromises the U.S. delegation's ability to negotiate multilateral implementation in the future; long term ramifications of lost quota have not been fully explored on both domestic and international fronts; and the United States should not ask any more of its citizens while quota is not harvested, and international conservation measures are not equivalent.

Other comments NMFS received regarding this issue include: when there is surplus quota in commercial categories, recreational anglers should be permitted to take part of this surplus; categories should not be punished or rewarded for not harvesting the quota until all arbitrary regulations have been removed; the Agency needs to proceed cautiously with rolling over quota in case there is a stock issue; however, the United States needs to maintain control of the underharvests due to the lack of conservation of other member nations; rollovers from the previous fishing year should be accessible in the January time period if the selected alternative to change back to a calendar year is implemented; uncaught sub-period quota should be rolled forward to allow for year-round General category landings. If the fishing year is changed to January 1, then any prior year's uncaught quota should be allowed to be caught between February 1 and May 31; implementing a domestic rollover limitation would adversely affect our ability to negotiate at ICCAT as the bottom line remains the same regardless of which domestic category the underharvest resides in; rollover limitations are helpful, however this item should be addressed at ICCAT; and, the Agency needs to be aware of the ripple effects quota rollovers have on business planning late in the season.

Response: This rule authorizes NMFS to limit the amount of BFT quota that may be carried forward from one fishing year to the next. By establishing a limitation that may be imposed on each domestic quota category, except the Reserve, NMFS will be better equipped to address quota stockpiling situations if they arise. This rule will not preclude inseason quota transfers to any of the domestic quota categories if warranted. Due to the different size classes that each category may target, the number of BFT per metric ton may differ; therefore the origin of the quota entering the category must be noted, to ensure mortality levels are consistent with those accounted for in the stock assessment. This rule will have minimal conservation benefits on the Western Atlantic BFT stock as a whole. NMFS supports an international discussion on the use of rollover caps, as well as their pros and cons. Implementing the potential use of a cap domestically should not adversely affect the U.S. delegation's ability to negotiate and play a strong role on this issue as U.S. BFT quota levels will remain consistent.

Comment 14: NMFS received comments supporting the consolidation of the inseason action determination criteria. These comments consisted of: revising and consolidating the criteria for BFT management actions improves the agency's flexibility and consistency in making determinations; and the preferred alternative should be selected, however, it needs to be clarified if the criteria have a different ranking of importance.

Response: Consolidating and refining the criteria that NMFS must consider prior to conducting any inseason, and some annual, actions will assist in meeting the consolidated HMS FMP's objectives in a consistent manner, providing reasonable fishing opportunities, increasing the transparency in the decision making process, and balancing the resource's needs with users' needs. The criteria listed are in no particular order of importance and will be fully considered, as appropriate, in making a determination; however, in some circumstances, not all criteria will be relevant to the decision making process.

Comment 15: NMFS received a number of comments that did not directly address the actions being proposed in the Consolidated HMS FMP, but are more general in nature or are more pertinent to the recently proposed 2006 Atlantic BFT Quota Specification and effort controls. These comments consist of: the maximum three fish per day General category bag limit should be eliminated. Flexibility to set the bag limit higher may be needed as the fishery evolves and to allow for the possibility of a distant water General category fishery; NMFS should relax the ''tails on tuna'' requirement. The tail is not necessary for species identification. This requirement prevents higher quality cleaning and storage at sea. Many years of data confirm that prohibited undersized tunas are either not encountered or are extremely rare in this fishery. ICCAT has eliminated the minimum size for some Atlantic tunas. The tails on requirement is an unnecessary and costly burden that should be removed; NMFS is using RFDs to deny fishermen a reasonable opportunity to catch the quota and to make U.S. fishermen do more to conserve BFT than fishermen from other countries with ICCAT BFT quotas. NMFS should not implement RFDs unless the General category quota is in immediate danger of being exceeded. NMFS should remove every domestic restriction that denies U.S. fishermen a reasonable opportunity to catch the quota.

Response: This action does not address these specific items, however, the 2006 Atlantic BFT quota specifications and effort controls address retention limits, as well as the use of RFDs in the coastwide General category. The final initial 2006 specifications published on May 30, 2006 (71 FR 30619). Regarding the removal of tuna tails, NMFS has received past comments from the industry, particularly the HMS CHB sector, to investigate this possibility. However, the proposal to process HMS at sea may compromise enforcement of domestic size limits. To date, NMFS has been able to enforce the domestic size limits for HMS through curved measurements, which requires the tail remain on the fish. This has been an efficient and effective way of enforcing size limits.

Comment 16: NMFS received comments requesting changes in the

allowable use of harpoons on CHB vessels. These comments include: NMFS should authorize the use of harpoons as primary gear to target giant BFT from the pulpit of CHBs to allow maximum flexibility. With the cost of doing business rising daily and the fishery changing dramatically over the past few years, this antiquated prohibition needs to be modified to allow CHB operators the opportunity and versatility to harpoon BFT on days that they are not carrying paying passengers. This rule was originally written to curb the sale of undersized BFT, which is no longer an issue.

Response: In 1993, NMFS created a recreational Atlantic tunas permit that was required for CHB or privately operated vessels targeting any of the regulated Atlantic tuna species. This rulemaking also established a list of allowable gears that can be used to harvest tunas. In 1995, NMFS removed the ability for vessels to hold more than one permit at a time. In that 1995 rulemaking, NMFS proposed, collected comments on, and finalized a list of authorized gears for the CHB sector of the fishery. Harpoons were not proposed as an authorized gear, nor were any comments received requesting this gear type be authorized for CHB vessels at that time; therefore, harpoon gear was not listed as an authorized primary gear type. As NMFS has conducted a number of rulemakings regarding permits, permissible gears, and targeted species, NMFS intends to conduct a comprehensive rulemaking regarding all HMS permits that could include, among other things, further rationalizing some segments of the HMS fisheries or restructuring the permit process (gear-based, species-based, or both). This future rulemaking may be better suited to address further revisions to authorized gears and the permitting structure for managed HMS. The issue of allowing the use of various gears to subdue HMS caught on authorized primary gears was analyzed in the Final Consolidated HMS FMP. Please refer to discussions of Authorized Fishing Gear.

B. Timeframe for Annual Management of HMS Fisheries

Comment 1: Public comments expressed both support and opposition for administratively adjusting all HMS fisheries to a calendar year. Commenters asked the following: what has changed since fisheries were originally shifted from a calendar year; Is the United States in compliance with ICCAT reporting requirements using a fishing year? Several commenters stated that use of a fishing year was not a disadvantage at ICCAT.

Response: This rule will adjust tuna, swordfish, and billfish fisheries so that all HMS fisheries occur on a calendar year. The previous shift from a calendar year to a fishing year (1996 for swordfish, 1999 for tuna and billfish) accommodated domestic markets for swordfish and provided additional time for rulemaking to implement ICCAT recommendations, since ICCAT traditionally meets in November of each year. Use of a fishing year is allowed by ICCAT. Since the fishing year was implemented for these species, several aspects of the fisheries and their management have changed. For the past several years, the U.S. has not fully harvested its swordfish quota, and has carried over quota underharvest from one year to the next. Because of this underharvest, summer swordfish markets have not been limited by the amount of quota available, and starting the fishing year in early summer to avoid quota shortfalls has been unnecessary. In addition, after several years of experience with ICCAT negotiations since the U.S. implemented the fishing year, NMFS and the U.S.'s ICCAT delegation have found misunderstanding regarding data alignment over time periods unnecessarily confuses decisions, negotiation, and ultimately enforcement of ICCAT recommendations. Adjusting tuna, swordfish, and billfish fisheries to a calendar year will increase transparency in U.S. data and statistics, and help focus on achieving domestic and international fishery management objectives such as reducing/eliminating IUU fishing.

Comment 2: Commenters expressed concern about the timely implementation of ICCAT recommendations under a calendar year, the potential disadvantage to U.S. fishermen if ICCAT recommendations were not implemented in a timely fashion, and the need for fishery specifications to be available prior to the start of calendar year fisheries.

Response: NMFS recognizes that switching back to a calendar year will reduce the amount of time between the adoption of ICCAT recommendations in November and the start of calendar year fisheries on January 1. This HMS FMP will adjust the process for issuing annual BFT specifications by consolidating the analysis in the FMP itself, and thus reducing the annual burden and associated amount of time necessary for promulgation of the annual specifications. NMFS anticipates that BFT specifications will usually be issued on time using these newly adopted procedures. Although ICCAT recommendations that can adjust quotas may be adopted at any time, usually such adjustments occur after stock assessments, which are performed at several year intervals. Thus, on average, more complex rulemakings are anticipated to occur less frequently. NMFS notes that rulemakings that adjust quotas or implement other significant changes in fishery management programs usually require more than the amount of time (e.g., seven months) that would have been available between adoption of a recommendation at ICCAT and start of the fishing year, if fisheries had been maintained on a fishing year schedule rather than adjusted to a calendar year.

Comment 3: Commenters opposed the adjustment to a calendar year because of potential socio-economic impacts of a shift to calendar year in combination with the proposed ICCAT 250 marlin limit, particularly for billfish tournaments. Commenters stated the following: a basic analysis demonstrating the economic importance of billfish tournaments should be included, and millions of dollars of prize money is missing from the current analysis; what is the impact if a large tournament that happened later in the year was restricted to catch and release fishing only; and, it appears that adjusting all HMS fisheries to a fishing year will socio-economically benefit most HMS fisheries.

Response: The HMS FMP identifies that the potential for reaching the ICCAT marlin 250 limit is low and subsequent prohibition of marlin landings unlikely. Over the past several years, U.S. billfish landings have only been attained in a single year. In addition, the FMP includes a measure that will allow increases in size limits as a means of reducing landings to avoid attaining the limit and implementation of catch and release fishing only. Despite the limited potential for reaching the limit, the Consolidated HMS FMP analyzes potential impacts should the limit be attained, using the worst case scenario that tournaments would be cancelled if the limit were attained. This analysis indicates that socio-economic impacts could be higher under a calendar year scenario. These impacts could be mitigated if tournaments required catch and release. On balance, NMFS anticipates that the benefits, as described in Chapter 4 of the HMS FMP and in the response to Comment 1 of this section, provided by switching to a calendar year and other regulatory adjustments set forth in the Consolidated HMS FMP will outweigh potential negative impacts. NMFS did not identify, nor did commenters provide, any positive socio-economic

impacts for switching the shark fishery to a fishing year. Impacts of concern for ICCAT managed fisheries (e.g. tuna, swordfish, and billfish) are discussed in the response to Comment 1 of this section.

Comment 4: Several commenters questioned the effect of a change to calendar year on the January General category BFT fishery, particularly the disposition of quota underages that may have occurred in the previous calendar year. Commenters stated the following: I oppose a shift to calendar year because of the potential negative impacts to southeastern fishermen; and, I support a roll-over provision from December to January similar to the rollover provision that exists between sub-periods during a fishing year.

Response: The HMS regulations at 50 CFR 635.27(a)(1) divide the General category quota into three subperiods including June through August, September, and October through January. These regulations further state that NMFS will adjust General category subperiod quotas based on under- or overharvest during the previous subperiod. Currently, the last subperiod spans the winter south Atlantic BFT fishery which usually begins in November and continues until the General category closes (at the latest on January 31). Under the Consolidated HMS FMP, these subperiods will be adjusted so that the winter fishery will include separate subperiods in December and January, each of which occur in a separate fishing year. An active fishery did not occur across the change of quota years prior to the 1999 FMP, which originally adjusted the BFT fishery to a fishing year. In addition, prior to 2003, the BFT fishery rarely experienced underharvest and roll-over of unharvested quota. Under this Consolidated HMS FMP, the January subperiod will have a quota of 5.3 percent of the annual ICCAT allocation. In consideration of a potential underharvest and rollover of General category quota from one calendar year to the next (i.e., December to January), NMFS has explored various ways to manage this situation. A preferred approach would depend upon the magnitude of the underharvest and the needs of the fishery at the time. Several potential alternatives regarding the disposition of carryover of any under or overharvest during the December subperiod are discussed in Chapter 4 of the Consolidated HMS FMP. In the first alternative, any under or overharvest could be fully rolled over into January of the following fishing year in addition to the baseline 5.3 percent. Under this scenario, the entire underharvest would be added to the January subperiod quota, or the entire overharvest would be subtracted from the subperiod quota. In another potential alternative, 5.3 percent of the under- or overharvest would be applied to the January subperiod in addition to the baseline 5.3 percent. In a third alternative, no under- or overharvest would be added or subtracted from the January subperiod's 5.3 percent allocation. NMFS will work with the affected constituents through the annual BFT specification process to determine the most appropriate approach based on constituent needs and Federal requirements.

C. Authorized Fishing Gears

Comment 1: NMFS received several comments in support of and opposed to the introduction of new gear. Comments supporting the introduction of new gears include: expansion of authorized gears would be acceptable in underexploited fisheries. Gears without bycatch problems could improve the availability of swordfish to the American public; and, gear innovations should not be stymied. Comments opposed to the introduction of new gears include: I am opposed to the introduction of any new commercial fisheries; do not allow new effective gears in fisheries that are undergoing rebuilding; do not allow any new gear types, especially for BFT; why should NMFS authorize new gears?; NMFS has reported that all HMS fisheries are fully harvested or overfished. NMFS's proposal to legalize new commercial gear violates National Standard 1, which is to prevent or end overfishing of tuna, swordfish, billfish, and sharks; this will not permit overfished stocks to rebuild. Additional new commercial gear can only result in fully harvested HMS becoming overfished; we do not support allowing new gears into overfished fisheries except for use as experimental fishing permits; NMFS proposes to authorize new commercial gear types that can only increase the harvest of HMS; and there is a lot of resistance to new gears in the Gulf of Mexico.

Response: As current or traditional gears are modified and new gears are developed, NMFS needs to be cognizant of these advances to gauge their potential impacts on target catch rates, bycatch rates, and protected species interactions, all of which can have important management implications. While NMFS needs to evaluate new and innovative gears and techniques to increase efficiency and reduce bycatch in fisheries for Atlantic HMS, the Agency did not select any new fishing gears for the HMS commercial fisheries at this time. Further, this action will not authorize any new gears for the bluefin tuna commercial or recreational fisheries.

In this action, NMFS considered the definition and authorization of speargun gear, green-stick gear, and buoy gear, as well as the clarification of the allowable use of secondary gears (also known as cockpit gears). At this time, NMFS is authorizing only one new gear for the HMS fisheries, recreational speargun fishing for Atlantic BAYS tunas. NMFS does not believe that the addition of speargun fishing for Atlantic BAYS would disrupt existing rebuilding plans for overfished BAYS tunas given the current number of participants in the recreational Atlantic tuna fishery relative to the expected number of spearfishermen. Additionally, taking into account the estimated low encounter rates for target species using speargun fishing gear, the additional anticipated effort from spearfishermen will likely result in minimal increased landings compared with the landings by current Angling and CHB category participants. A limited number of additional individual fishermen are expected to use this gear type, and spearfishermen may actually fish for months or years without having an opportunity to spear a tuna. All sale of tuna harvested with recreational speargun fishing gear will be prohibited in order to clarify the intent of authorizing this gear type, which is to allow a small group of fishermen an opportunity to use spearguns to recreationally target BAYS tuna. BFT are excluded from the list of allowable target species for speargun gear due to the recent declining performance of the existing BFT fishery, recent quota limited situations within the BFT Angling category, and ongoing concerns over stock status.

The selected buoy gear alternative will not authorize a new gear; rather, it will rename the handline fishery for commercial swordfish and limit the number of gears deployed in this fishery. Defining ''buoy gear'' was necessary because the Final Consolidated HMS FMP will also modify the ''handline'' definition to require that the gear be attached to a vessel. Therefore, under the selected alternative, the commercial swordfish handgear fishery will be the only fishery where free-floating handlines, now referred to as buoy gear, will be authorized. Under this rule, buoy gear fishermen will be limited to possessing or deploying no more than 35 floatation devices, with no more than two hooks or gangions attached to each individual gear. Prior to this action, buoy gear had been utilized with no limit on the

number of gears deployed, as long as each gear had no more than two hooks attached and it was released and retrieved by hand. Also, both recreational and commercial fishermen were able to use this gear in areas closed to PLL gear. Under the selected alternative, buoy gear will be prohibited for use by all commercial fishermen without a swordfish handgear or directed limited access permit and by all recreational fishermen. Additionally, when targeting swordfish commercially, the number of individual gears a vessel may possess or deploy will be limited to no more than 35. Vessels with directed swordfish or swordfish handgear LAPs may use this gear type to capture swordfish in pelagic longline closed areas, provided all longline gear has been removed from the vessel. While buoy gear will be allowed in the Gulf of Mexico, the swordfish handgear fishery does not appear to be widespread and operates primarily off the East Coast of Florida, according to public comment.

Based on public comment, the Agency prefers to clarify the authorized configuration of green-stick gear, rather than proceed with authorization and definition of the gear-type that may further add to the confusion and have unintended negative consequences to the fishery and resource. Public comments were opposed to and supported authorizing green-stick gear for the commercial harvest of Atlantic BAYS tunas; expressed considerable confusion over the current regulatory regime; were concerned about the need for better reporting, monitoring, and overall data collection for this gear-type; and expressed a need to further understand the gear's technical nature.

Comment 2: Commercial HMS handline gear, buoy gear, and green-sticks should be prohibited in the closed areas.

Response: The current HMS closed areas were specifically developed for a particular gear type (e.g., PLL or BLL) to reduce bycatch and discards. At this time, there are no time/area closures for buoy and handline gear. If a green-stick is configured with more than two hooks, then it would meet the definition of ''longline,'' and thus, would also be prohibited from certain closed areas. If future data indicate that the bycatch rates of these gears are high, NMFS would consider closing certain areas, or other management measures, to minimize bycatch and bycatch mortality, to the extent practicable.

Comment 3: NMFS received a comment concerned about the bycatch associated with the introduction of new gears. Those comments include: small tuna fisheries, like NMFS is trying to promote with the handline, buoy, and green-stick fisheries, will negatively affect marlin stocks because they target marlin prey species; and, were any bycatch analyses conducted for the proposed authorized gears?

Response: This action will not change the currently allowed and authorized use of green-stick gear in any HMS commercial fishery. This action distinguishes between handlines and buoy gear, such that handlines must be attached to the vessel and buoy gear will be allowed to float freely; however, both handlines and buoy gear were authorized and used in HMS fisheries commercially and recreationally prior to this action. The rule limits buoy gear usage to the commercial swordfish fishery for individuals with a swordfish handgear or directed limited access permit. No HMS other than swordfish may be harvested with buoy gear. Because swordfish is not a marlin prey species, the Agency does not believe buoy gear will have a negative impact on marlin stocks. No bycatch analyses are available for handline or buoy gear, but data from the logbooks were reviewed. The HMS logbook does not distinguish between attached and unattached handlines, so specific information on unattached handline (or buoy gear) catch is limited. In general, the HMS commercial handline fishery has relatively few discards. While there are no bycatch analyses available for recreational speargun fishing, public comment suggests that the number of individuals using this gear will be small and those that do use the gear expect low encounter rates with target species. According to public comment, this fishery is highly selective and the gear has been designed to retain speared fish and reduce fish loss. With the authorization of this gear for the recreational harvest of BAYS tunas only, information about speargun catch will be captured via the MRFSS and LPS.

Comment 4: NMFS should clarify the HMS authorized gear regulations to allow for gear stowage provisions. Such provisions would enable vessels to diversify, and would also provide vessels with the ability to operate in other fisheries. The Northeast gear stowage provision needs to be acknowledged in the HMS regulations.

Response: A gear stowage provision for HMS permitted vessels was not considered in this action and, therefore, is not authorized at this time. NMFS has concerns about the enforceability of such a provision in HMS closed areas. The Agency would appreciate additional comments on situations where gear stowage provisions are necessary, as well as for which particular gears and areas. A gear stowage provision may be considered in a future rulemaking, if appropriate.

Comment 5: NMFS received comments from individuals concerned about the use of gillnets in HMS fisheries. These comments include: the Georgia Coastal Resources Division supports the removal of shark gillnet from the list of authorized HMS gear; and, gillnets should not be an authorized gear, particularly sink gillnets due to interactions with protected resources and other bycatch. If NMFS is going to continue to allow gillnets, the vessels should be required to use VMS year round.

Response: NMFS considered prohibiting the use of shark gillnet gear as part of a range of commercial management measures to prevent overfishing of finetooth sharks, but did not pursue this option because finetooth sharks would continue to be discarded dead in other non-HMS fisheries, and thus, the prohibition would not likely prevent overfishing. In this action, NMFS will require shark gillnet vessel owners and operators to attend the protected species safe handling and release workshop and obtain certification. The goal for this workshop will be to reduce the mortality of sea turtles, smalltooth sawfish, and other protected species. At this time, vessels issued a directed shark LAP with a gillnet on board that are away from port during the right whale calving season must have VMS on board. This action did not consider expanding this condition to require VMS on shark gillnet vessels year round.

Comment 6: There is confusion regarding the proposed gears. The process needs to slow down, and we need to make sure we understand what our goal is. We should be encouraging innovation. Each gear needs to be reviewed to determine where each gear appropriately fits; the public is going to need more education on the proposed gears and associated requirements. The Agency needs to clarify before authorizing; and, the language in the alternatives needs to be looked at, it appears some alternatives are allowing use to continue and others are allowing its entry.

Response: While NMFS encourages the use of clean and efficient gears, this action will authorize the use of only one new gear type due to the stock status of several HMS. Speargun fishing gear will be authorized only for permit holders with HMS Angling category or HMS CHB cateogry permits and users will be allowed only to target Atlantic BAYS tunas recreationally. It will not be

authorized for BFT, or any other HMS. The sale of BAYS speared by speargun gear is not allowed. The selected alternative for buoy gear will not be an introduction of new gear, rather a clarification of an existing gear and a restriction on the number of floatation devices used in the existing commercial swordfish handgear fishery. In an effort to reduce confusion and increase compliance, NMFS will modify the HMS compliance guide and other outreach materials to reflect these changes to the HMS authorized gears.

Comment 7: NMFS must clarify that a longline vessel is allowed to use the following fishing gears when not longline fishing: handgear including, harpoon, handline, and rod and reel (plus the green-stick method, if authorized).

Response: The HMS regulations at § 635.21(e)(1) state that if an Atlantic BFT is retained or in possession, the vessel may employ only the gear authorized for the particular Atlantic tunas or HMS permit category issued to the vessel. In other words, with a BFT on board and an Atlantic Tunas Longline permit issued to the vessel, only longline gear may be possessed or employed. When fishing for Atlantic BAYS tunas, the vessel may employ fishing gear authorized for any Atlantic Tunas permit category. The two exceptions are that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit as well as LAPs for both swordfish and sharks. When targeting Atlantic BAYS tunas with an Atlantic Tunas Longline permit, a vessel may use handgear (i.e., harpoon, handline, rod and reel, and bandit gear) provided BFT are not in possession or retained on board the vessel. However, the vessel must possess all applicable and valid Federal permits, possess the safe-handling and release placard and equipment, and abide by the longline gear restrictions (e.g., closed areas and circle hooks). If a vessel is fishing in a closed area and has longline gear on board, it is a rebuttable presumption that longline gear was used to catch any fish on board that vessel. Green-stick and rod and reel gear may be utilized on a pelagic longline vessel, so long as all other PLL management measures are adhered to, including the use of circle hooks.

i. Spearfishing

Comment 8: NMFS received numerous comments supporting the authorization of speargun gear in the recreational Atlantic tuna fishery, specifically alternative H2, which would authorize speargun fishing gear in the recreational Atlantic tuna fishery. The comments include: authorizing speargun fishing gear for Atlantic tunas would provide very high economic benefits and produce very low ecological impacts; the impact of tuna spearfishing would be minimal and the number of participants would be low; spearfishermen were left out of the List of Fisheries for tunas and sharks when initially established; and, a speargun fisherman can choose his target, assess his chances, and be more discriminate in his hunting, which is not something a hook and line fisherman can do. Comments received in support also stated affirmation that recreational divers would be allowed to be transported to the site by a charter dive boat; and, the tuna regulations would allow the taking of tuna in the Atlantic with handheld, rubber band or pneumatic power spearguns by recreational fishermen while underwater.

Response: This rule will authorize the use of spearguns in the recreational Atlantic BAYS tuna fishery. Holders of recreational HMS Angling and HMS CHB permits will be allowed to carry spearguns and fish for, retain, and possess any of the BAYS tunas using speargun gear. Speargun gear will not be authorized under any other HMS or Atlantic tuna vessel permit or for any other HMS species. Speargun gear will not be authorized to fish for, retain, or land Atlantic BFT. BAYS tunas killed and landed with the use of speargun gear may not be sold under any circumstances, including by owners, operators, or participants on HMS CHB vessels. Fishermen using speargun fishing gear will be allowed to freedive, use SCUBA, or other underwater breathing devices, and will be required to be physically in the water when they fire their speargun. Only free-swimming fish, not those restricted by fishing lines or other means, may be taken. The use of powerheads, or any other explosive devices, will not be allowed to harvest or subdue BAYS tunas with this gear type. In addition, spearfishermen will be required to abide by all existing recreational management measures under the Angling category regulations when recreationally fishing for BAYS tunas (i.e., minimum size requirements of 27 inches curved fork length for BET and YFT, three YFT retention limit per person per day, as well as all current state and Federal reporting requirements).

Comment 9: NMFS received several comments that supported spearfishing gear but requested allowing its expansion beyond recreational tuna fishing while other comments supported additional restrictions. Comments in support of expansion include: adding spearguns as an allowed gear for sharks; and, all HMS fisheries should eventually open to spearfishing. The GMFMC specifically supported spearfishing as an approved gear for all HMS fisheries, including sharks, and recommended that the gear be authorized for recreational and commercial harvest. In contrast, other comments supported restricting the use of spearguns as proposed, stating no sale should be allowed for anyone when a tuna is harvested with a speargun under any circumstances, and speargun fishermen should not be allowed to sell tuna catches from CHB vessels as proposed. A commenter stated his concern that the ability to sell fish might be viewed as an impediment to allow participation in this fishery and, thus, NMFS should not allow sale of fish to avoid jeopardizing any chance of authorizing recreational use of speargun fishing gear. NMFS also received comments to further restrict the use of speargun fishing gear to allow only freedivers to harvest tuna (i.e., not allow SCUBA gear) consistent with original public comment on use of this gear-type.

Response: This rule will authorize the use of spearguns in the HMS recreational fishery only for Atlantic BAYS tunas. This measure will provide speargun fishermen an opportunity to use this gear-type and will increase the social and economic benefits for this user-group. While providing this opportunity, NMFS is also balancing concerns of introducing a new gear type in fisheries with considerable numbers of existing fishermen participating in exploited fisheries. Since publication of the list of authorized gears and fisheries and the 1999 FMP, spearfishermen have consistently argued for access to HMS fisheries. Spearfishermen have argued in particular for recreational access to the Atlantic tuna fishery to target big tuna for the social and recreational opportunity rather than the desire for economic gain. This rule will prohibit the sale of Atlantic BAYS tunas captured by speargun to minimize the possibility of additional expansion of the user-group to those interested in commercial gain from the activity and inconsistent with intent of the selected alternative. Spearguns will not be allowed to target BFT, primarily due to the depleted status of the western Atlantic stock, uncertainty over the status of the stock, and continuing poor performance of the fishery. The use of

spearguns in HMS fisheries other than the Atlantic tuna fishery, (i.e., shark, billfish or swordfish fishery) was not considered in the Draft Consolidated HMS FMP, although as these stocks improve some additional fishing opportunities for new and efficient gear-types may be considered in the future. NMFS considered further restricting speargun activity to only free-divers, (i.e., no SCUBA gear or other types of underwater breathing apparatus) to further limit the universe of participants. Free-divers were the original group of speargun fishermen who had requested the opportunity to participate in the recreational tuna fishery. However, it was determined that not allowing SCUBA gear would have raised additional safety concerns.

Comment 10: NMFS received several comments regarding aspects of speargun fishing that would keep participation and catch low. Those comments include: technical knowledge barriers for a novice and inexperienced individual that wishes to engage in this activity; harvesting two or three tunas in a lifetime would be lucky because a speargun fisherman needs to know what they are doing and where to go fishing; there are not a lot of opportunities to learn how to spear BAYS tuna; the cost of the equipment including the initial cost of upgrading spearfishing gear (e.g., larger gun, shafts, spearpoints, floats, lines, and safety items) will exceed $3,000 and that is before chartering a vessel; and the need to use a boat to access BAYS fishing grounds.

Response: NMFS acknowledges that the number of participants using spearguns in a recreational BAYS tuna fishery is likely to be low and the number actually encountering and successfully striking a BAYS tuna lower still. NMFS understands that the primary intent of allowing the use of spearguns in the recreational BAYS tuna fishery is to allow participants the opportunity and access to the fishery for the recreational and social benefits it affords. Successful participation would still mean adequate preparation and/or possible training (e.g., dive certificate) and the correct equipment. However, willing participants will no longer be prohibited by regulation from using spearguns in the recreational BAYS fishery.

Comment 11: NMFS received comments related to the level of bycatch associated with speargun fishing. Those comments include: most recreational fishermen practice catch-and-release fishing, but speargun fishermen practice release-and-catch fishing; speargun fishermen are very selective about the fish being targeted and use one shot, usually resulting in no bycatch; and spearfishermen can see the fish and do not take unwanted species or undersized fish; and they leave no lines or other gear on the bottom to snag other fish, lobster, or turtles. A few comments stated concerns that some spearguns under this gear type may not have the capability to land large HMS, resulting in a source of unreported mortality and that spearing a fish that dies without being harvested would be considered bycatch.

Response: There are minimal data available to support or refute concerns regarding bycatch by spearguns in the BAYS fisheries. It is evident that the nature of the gear-type can be highly selective and targeted to specific fish, unlike traditional hook-and-line fishery. Spearfishermen are unlikely to injure other species such as HMS, sea turtles, or marine mammals as they can selectively target their catch. However, it remains unknown how many strikes of targeted BAYS may result in mortality and retention versus wounding and subsequent escape with some unknown proportion mortally wounded. Public comment by spearfishermen states that it is possible to accurately identify species and size class before firing the spear and thus the bycatch and mortality of incorrect species (e.g., BFT) or undersized tuna (i.e., less than 27 inches) should be minimal.

Comment 12: NMFS received several comments regarding potential gear and user conflicts that may arise with the authorization of speargun gear such as: nothing prevents divers from dropping a dive flag in the middle of a group of rod and reel vessels or on a specific wreck, and driving rod and reel vessels off the fish/wreck. In contrast, other commenters noted that spearfishermen and diver interactions with boat traffic should not be an issue in offshore fisheries, as it can be in inshore waters, that the spearfishing community has taken as many precautions as possible, and that no accidents have occurred in New Hampshire or Rhode Island where speargun fishing gear is currently allowed in state waters when targeting striped bass.

Response: Speargun users and rod-and-reel recreational fishermen will need to respect each other's activities and safety when sharing the same fishing grounds to avoid gear and user conflicts. Speargun fishermen will likely choose fishing areas and tuna hunting grounds away from other rod-and-reel vessels to maximize the diver's recreational opportunity and minimize safety concerns. Likewise, under existing vessel safety regulations (see 33 CFR Subchapter E and the U.S. Coast Guard Navigational Rules), recreational vessels must give adequate berth to dive-flags in the water and vessels flying diving signals.

Comment 13: NMFS received several comments on the economic benefits associated with speargun fishing. These comments include: allowing recreational speargun fishing for tuna would create an economic boost to coastal communities. When spearfishing, one would usually fill up the car with gas, have lunch, buy souvenirs or gear, and sometimes pay for a boat ride and not spear many fish; and, at the 4th Annual Hatteras Blue Water Open this year, there were 50 entrants from all over the world and eight charter vessels generating $60-$75,000 in revenue to the area in four days and there would have been more participants if tunas were included.

Response: It is expected that allowing spearguns into the recreational tuna fishery will provide an economic benefit to the fishery even though the actual sale of landed BAYS tuna will be prohibited. Recreational speargun fishermen are likely to invest in fishing stores and dive-shops for appropriate gear and contribute to local economies by renting hotel rooms and chartering vessels or renting equipment, etc.

Comment 14: NMFS received comments stating that if spearfishing gear is allowed to harvest Atlantic tunas, then the Agency must devise and implement mandatory permitting, reporting, monitoring, and enforcement. One comment specifically stated that if NMFS cannot guarantee this, there should not be an additional uncontrollable fishery.

Response: All HMS recreational spearfishing activity must be conducted from a federally permitted HMS Angling or HMS CHB category vessel. NMFS currently requires mandatory reporting of all recreational landings of BFT, swordfish, and billfish via automated telephone systems. Although the Agency does not currently have similar requirements for recreational landings of BAYS tunas, NMFS monitors HMS recreational effort and landings through Federal recreational surveys, such as the MRFSS and LPS in addition to State monitoring programs. NMFS enforcement works in cooperation with local and State enforcement programs to ensure compliance with management measures in both recreational and commercial fisheries. NMFS will monitor compliance with reporting requirements and may consider modifications to requirements, as appropriate, in the future.

Comment 15: NMFS received a comment stating that there are fishermen currently using spearguns to harvest YFT that do not realize it is illegal to use the gear to target Atlantic tunas. Spearfishing has been included as a category in some of the tournaments.

Response: Until the final rule authorizing recreational speargun fishing for BAYS tunas takes effect, any use of spearguns to fish for any HMS is illegal. The list of authorized gears has been published since the end of 1999 (December 1, 1999; 64 FR 67511) and numerous brochures and guides that have been published since that date clearly specifying the authorized gears for HMS with valid permits. Currently, speargun gear is not an authorized gear for any HMS. After the effective date of this final rule, speargun gear will be legal for BAYS tunas, but not for other HMS.

Comment 16: NMFS should not allow another directed commercial fishery (e.g., speargun fishing gear) for giant BFT.

Response: This rule does not authorize another directed commercial fishery for giant BFT. It does not authorize the use of spearguns to fish for, retain, or land any Atlantic BFT, in either the recreational or commercial fishery.

Comment 17: Speargun fishermen would want to target the largest fish available due to the difficulty in taking smaller fish, the trophy nature of the fishery itself, and the largest take for time and money invested in the opportunity.

Response: NMFS recognizes that a prime motivation for spearfishermen to enter the Atlantic BAYS tuna fishery is the opportunity to recreationally fish for a big fish. Spearfishermen will need to abide by all existing recreational management measures, including the minimum size for YFT and BET of 27 inches curved fork length and retention limits. There is no minimum size for albacore or skipjack tuna. Blackfin tuna are not federally regulated.

ii. Green-Stick Gear

Comment 18: NMFS received several comments supporting the preferred alternative to authorize green-stick gear for the commercial BAYS tuna fishery. These comments include: green-stick gear is much better than longlines and could be an alternate gear; green-stick gear is the most environmentally sound way to harvest tuna; if green-stick gear is a viable U.S. HMS fishery, then NMFS needs to be flexible in allowing its use; and, the use of green-stick gear for directed fishing by pelagic longline vessels when targeting BAYS should be approved. In contrast, NMFS received several comments opposed to authorizing green-stick gear for tunas. The GMFMC commented that green-stick gear is classified as longline gear in the Gulf of Mexico and if it is authorized, it is likely to become very abundant and could have a negative impact on stressed and overfished stocks; green-stick gear is an excuse for more longline fishing using a slightly different method; and green-stick gear is similar to longline gear and therefore should not be allowed into closed areas.

Response: This rule will not provide a regulatory definition of ''green-stick gear'' as a separate authorized gear and as differentiated from already authorized forms of handgear (rod-and-reel or handline) and longline gear. This is a change from what was proposed. Under existing regulations, green-stick gear is already authorized depending on how it is configured and how many hooks are on each line. Due to the current confusion over what is already allowed and how the draft preferred alternative may or may not have changed current uses of green-stick gear, NMFS is not modifying the list of authorized gears for green-stick gear at this time. In addition to the existing confusion and the potential to exacerbate the situation by changing the regulations, there is conflicting opinion and little data to support or refute its efficiency and impact on target and non-target stocks. NMFS intends to publish a brochure clarifying acceptable configuration of green-stick gear under the existing HMS regulations. In the meantime, NMFS will also work with current logbook and monitoring programs to examine ways to collect additional information on the use of green-stick gear and its impact on the environment as well as its social and economic benefits and consequences.

Comment 19: NMFS received numerous comments in support of authorizing green-stick gear for targeting BFT, as well as BAYS. These comments include: green-sticks are permanently attached to the vessel, so why do the proposed regulations state that a vessel could never possess a BFT onboard if green-stick gear is onboard; green-stick gear is the same as the trolling fishery, meaning the same boats, same gear, and same permits are used as those used to target BFT; the Japanese use this gear to harvest BFT because minimal lactic acids build during the fight; green-stick gear should be allowed for all Atlantic tunas provided there are mandatory permitting, reporting, monitoring, and enforcement of this fishery; BFT have been harvested using green-stick gear in the past and should be allowed to be continued; in North Carolina, green-stick gear has been used to catch BFT; past BFT landings using this gear type have been reported as rod-and-reel therefore a group of individuals are going to be adversely impacted if BFT are not allowed; this rule will make it even harder to catch the BFT quota; and, curiosity as to what conservation benefits are to be had by not allowing BFT to be retained as there are other management measures in place for BFT such as size and retention limits as well as quotas. One comment stated support for General category fishermen to target BFT with green-stick. The same commenter only supported the authorized use of green-sticks by longline permitted vessels as an allowed gear for directed YFT fishing and did not support the use of green-sticks by pelagic longline fishermen to target BFT while aboard a permitted pelagic longline vessel.

Response: Throughout the development of the Draft Consolidated HMS FMP, most of the analysis and comment from scoping led the Agency to determine that green-stick gear was primarily used to target BAYS tunas and that the methods of fishing with the gear were not conducive to targeting BFT. In addition, due to the current severely depleted status of the BFT stock, the introduction of a new gear-type and adding fishing pressure in this already heavily capitalized fishery is not appropriate at this time. Thus, it was determined in the Draft Consolidated HMS FMP that it was possible to consider the use of green-stick gear, in a manner that modified the status quo, for a BAYS only fishery. Furthermore, it was determined that excluding BFT from the allowed list of target species would provide marginal positive economic and social impacts to the BAYS fishery with neutral biological impacts to the BFT stock. However, at several public meetings on the Draft Consolidated HMS FMP and in written comment, particularly from the mid-Atlantic area, it was evident that there is an active interest in using the gear to target BFT. The preferred alternative in the Draft Consolidated HMS FMP could have eliminated this opportunity allowed under the status quo, provided the gear is configured to conform to the current regulations. For BFT fishing, these conditions exist generally when commercial fishing for BFT in the General category (or with an HMS CHB permit) using handgear (rod-and-reel, handline, or bandit gear) with two hooks or less. These conditions also exist when recreationally fishing for

BFT in the Angling category (or with an HMS CHB permit) using handgear (rod-and-reel or handline) with two hooks or less. The limit on the number of hooks for both recreational and commercial handgear has helped limit effort in currently overcapitalized fisheries targeting species with weak stock status (i.e., either overfished or approaching overfishing). Furthermore, the incidental retention of BFT by green-stick gear, trailing more than two hooks, is authorized under a Longline category permit so long as all other corresponding management measures are adhered to such as target catch restrictions, use of circle hooks, avoidance of closed areas, etc.

Since the publication of the Draft Consolidated HMS FMP in August 2005, NMFS received data on the performance of both the recreational and commercial BFT fishery. In the case of the commercial fishery, landings were low throughout the 2005 fishing season. The 2005 season was also marked by a noticeable lack of availability of commercial sized BFT throughout their traditional fishing range and, in particular, BFT were largely absent off southern states during the winter of 2005/2006. Although the available quota in the commercial size classes is high, scientists continue to be concerned over the status of this stock, especially the abundance of these larger fish that represent the potential spawners for future recruitment, particularly in the Gulf of Mexico. An international stock assessment on the current status, and future prognosis, of BFT is scheduled this year by the SCRS and new recommendations, if any, by ICCAT would not be available until November 2006. NMFS will continue to analyze potential impacts of authorizing green-stick gear and may consider modifications in the future, as appropriate.

Comment 20: NMFS received several comments regarding the technical nature of green-stick gear including comments comparing and contrasting the gear type to longline gear and commercial or recreational handgear such as handline and rod-and-reel. Comments included: green-stick gear is very different from longline gear in that when deploying green-stick gear the greatest distance the hooks are from the boat is 500 feet, whereas PLL gear has one hook a football field length away from one another; longline gear is set in the water column with many hooks while green-stick is trolled at a high speed with the artificial baits suspended above or skipping across the waters surface; this gear is trolled and is not set out to drift, which makes it very different from the definition of a longline gear; green-stick is similar to longline gear therefore it should be prevented from entering into closed areas; this gear is still a longline because of the use of hydraulics and several hooks; there are two distinct types of green-stick fishing and each should be carefully defined separately; the commercial green-stick method uses multiple hooks with artificial baits on a single line to catch Atlantic tunas, including BFT; the recreational green-sticking is an ''angling'' method primarily using rods-and-reels to catch Atlantic tunas, including BFT; some recreational gear is being pulled with more than two hooks per line; teasers without hooks should be allowed; the definition should include using no more than two hooks per any single line attached to the green-stick that basically acts as a vertical out-rigger; green-stick gear should be restricted to hand powered reels; green-stick gear is also appropriate for use in the Angling and General category fisheries; and, recreational fishermen using green-stick gear could open up illegal commercial sale opportunities.

Response: NMFS notes that there are considerable similarities between the use of green-stick gear and recreational and commercial handgear as well as longline gear depending on how green-stick gear is configured and used under current definitions at 50 CFR parts 600 and 635 and in accordance with all gear operation and deployment restrictions at 50 CFR 635.21. ''Longline'' means fishing gear that is set horizontally, either anchored, floating, or attached to a vessel, and that consists of a mainline or groundline with three or more leaders (gangions) and hooks, whether retrieved by hand or mechanical means. Any hook and line gear with three or more hooks is considered to be a longline. In addition to the use of rods and reels, ''handline gear'' means fishing gear that consists of a mainline to which no more than two leaders (gangions) with hooks are attached, and that is released and retrieved by hand, rather than by mechanical means. Finally, the use of bandit gear and downriggers is also an authorized means of deploying and retrieving the hook and line. ''Bandit gear'' means vertical hook and line gear with rods that are attached to the vessel when in use. Lines are retrieved by manual, electric or hydraulic reels. A ''downrigger'' is a piece of equipment attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling. In addition to the above definitions and gear restrictions, specific additional management measures may apply to the use of gear depending on the targeted fishery and HMS or tuna vessel permits (i.e., 50 CFR part 635 subpart C, as well as general permitting, recordkeeping, and monitoring requirements at 50 CFR part 635 subpart A).

Comment 21: NMFS received several comments and questions noting the level of confusion regarding what constitutes the technical nature of ''green-stick'' gear, and how it can already be used versus modified by the proposed alternative. Comments include: the definition of ''longline gear'' is the problem, not ''green-stick gear''; over one hundred green-sticks have been sold and you need to change the definition; it is not the stick that is the most important part of this gear, rather the suspended bait attracts the fish, not the number of baits; fishermen can use only one rod due to tangling; green-sticks are permanently attached to the vessel; green-stick gear is used to catch larger tuna, and that the gear is set-up vertically allowing the bait to fish further from the vessel; we support the use of green-stick gear by commercial vessels, but only if restricted to hand powered reels, but not if used with electric or hydraulic reels; this trolling method does not require any large device and is easy to set up on a small vessel and it is used to catch BFT and YFT around the world; the name ''green-stick'' comes from the original color of the pole, but today it is available in a variety of colors; and, as green-stick gear is permanently attached to the vessel there could be enforcement issues as the gear can be configured either as commercial or recreational. Questions include: what permit would be required to use this gear; would live bait be allowed with this gear; will configuration of the gear use rods and reels or hydraulic drum, how would one know the type of gear used to catch the fish if different gear types are allowed on the same vessel but not authorized to land the same species; is there a length limit on a rod and reel to distinguish it from green-stick gear; what does it matter how many hooks are on the line when operating under a General category permit; if we have longline and incidental BFT permits can we use green-stick gear; how do the incidental limits apply to longline vessels using green-stick gear; under the current regulations, what permit would be required for someone who fishes with green-stick gear for YFT; which will have more hooks - green-stick gear or recreational gear; can green-stick gear fish in the closed areas; do the reporting

requirements for General category permit holders call for reporting the gear employed; would green-stick fishermen be able to use live bait as it is proposed currently; in which fishery can the gear be authorized; is green-stick gear currently used in the Gulf; and can it be used at all in the Gulf of Mexico where BFT cannot be targeted since it is a spawning area?

Response: NMFS acknowledges that there is considerable confusion over the status of green-stick in the HMS fisheries under current management measures. NMFS intends to publish a brochure to clarify the current situation. This rule will maintain the current definitions for use of longline gear in the longline fishery and handgear in the commercial General category, the recreational HMS Angling, and the HMS CHB fishery. Thus, the use of green-stick gear is still allowed as in the past and in conformance with the appropriate management measures and existing reporting requirements for these HMS fisheries. No new regulatory definitions or permits are being implemented at this time. Green-stick gear can be used in any configuration so long as it conforms to current definition of the use of longline or hook-and-line handgear as currently defined in the regulations, and as described in the response to Comment 20 above.

Comment 22: NMFS received several comments regarding the need for additional data regarding this gear-type. One comment stated the fishery needs further analysis on the use and configuration of green-stick gear and one commenter questioned what information would NMFS need collected to conduct a more detailed analysis of the impacts of using this gear. A comment stated that there needs to be some accommodation of this gear type, even if it is through an EFP to collect further information. A comment stated that the information used from the North Carolina Sea Grant paper referenced in the Draft Consolidated HMS FMP is out of date and that the gear has been altered as individuals have gained experience using it.

Response: NMFS agrees that the Agency and the fishery could benefit from additional data on the use of green-stick gear and its impact on both the recreational and commercial constituencies, HMS stocks, and bycatch. In the past, green-stick gear was identified as a unique gear type on HMS Vessel Pelagic Logbook reports, but was discontinued as it was not a uniquely identified and defined gear. It also appears that fishermen had already been reporting green-stick HMS landings under either hook and line gear or longline gear. As a first step, NMFS intends to publish a brochure to clarify current allowable uses of the gear and how existing vessel and dealer permit and reporting requirements apply. NMFS also intends to examine whether or not existing monitoring programs should be modified to understand more adequately the uses and impacts of this gear or whether some additional program is necessary, including potential use of the EFP program. The North Carolina Sea Grant paper published by Westcott, 1996, contains historical and background data on green-stick gear that NMFS used to define and graphically present different ways to configure the gear. NMFS would appreciate assistance in locating more recent updates and/or publications that could be used to assist with the development of the planned brochure describing green-stick gear. NMFS is interested in knowing how many fishermen use, or have used, this gear and in what configurations that conform with or differ from the current definitions. In addition, NMFS is interested in the locale and distribution of its use, preferred target species, efficiency over other gear-types, amounts and rates of bycatch, and social and economic costs and benefits of using the gear, among other things.

Comment 23: NMFS received comments on the bycatch associated with green-stick gear. Those comments include: almost all tuna are hooked in the mouth and could be released relatively unharmed, there are no turtle interactions, and other bycatch is limited because billfish and shark species have difficulty reaching bait that spends so much time in the air; and, green-stick gear is a gear that minimizes the interactions of billfish with commercial handgear and should be promoted. Other comments noted a need to be cautious about potential bycatch issues and that NMFS needs to confirm the level of bycatch associated with this gear type; NMFS needs to prohibit this gear's use in the Gulf of Mexico due to potential bluefin tuna bycatch; the description of green-stick gear sounds like longline gear, which could mean greater bycatch and there should be no additional gear used in the Gulf of Mexico; and, we are opposed to green-stick gear because it appears to be a trolled longline and the biggest bycatch of marlin is in the yellowfin tuna fishery.

Response: This rule will not modify the regulations to define ''green-stick gear'' and thus NMFS does not expect the levels of bycatch to change as a result of implementing the No Action alternative. NMFS has minimal data available to analyze the bycatch issues associated with green-stick gear deployed as a form of handgear or as a longline. NMFS expects that trolled green-stick gear, configured as a version of rod-and-reel handgear, would have bycatch issues similar to that of conventionally configured rod-and-reel gear. Data from Pacific green-stick fisheries indicate that increases in billfish bycatch are possible although no billfish were reported caught on green-stick gear in Atlantic commercial fisheries. Under the current regulations, the use of green-stick gear is allowed (as clarified in the response to Comment 21 and elsewhere in this document) in the Gulf of Mexico although it may not be used to target BFT in this area to protect spawning BFT. NMFS continues to be concerned about levels of bycatch in HMS fisheries as well as in other fisheries that encounter HMS as bycatch. Overall, the Agency has continued to address bycatch issues in federally managed fisheries and, consistent with National Standard 9, to implement management measures that minimize bycatch. Since 1999, NMFS has implemented a number of time/area closures to reduce bycatch to the extent practicable and, in the Draft Consolidated HMS FMP, examined numerous alternatives to determine if the closures were still meeting their original goals. Many of these measures, but not all, were designed to reduce bycatch in the pelagic longline fleet. In addition, the Draft Consolidated HMS FMP examined alternatives to train and certify fishermen in the safe handling, release, and disentanglement of protected resources from pelagic and bottom longline and gillnet gear. With the addition of new measures in the Final Consolidated HMS FMP, NMFS expects to continue minimizing bycatch throughout HMS fisheries.

iii. Buoy Gear

Comment 24: NMFS received several comments supporting alternative H5, which would authorize the use of buoy gear only in the commercial swordfish handgear fishery. Some of those comments include: buoy gear should be for commercial use and handlines for recreational use; more recreational fishermen are currently using buoy gear than commercial fishermen; buoy gear should be used to target swordfish because it is an effective gear; I do not support the use of recreational buoy gear, but it should be a commercial subcategory; buoy gear should be allowed, but not where it will conflict with recreational vessels and gear; and this alternative is trying to establish a commercial fishery. Pelagic longline

vessels could remove their longline gear and set buoy gear in closed areas.

Response: Free-floating buoyed lines are currently in use in many areas; however, they are being fished as ''handline gear,'' as defined by current HMS regulations. Currently, there are no limits on how many handlines a vessel may deploy, as long as each gear has no more than two hooks attached. NMFS heard during scoping that the use of this gear was expanding. This rule will change the definition of handline gear to require that the gear be attached to a vessel and allow free-floating handlines, renamed as buoy gear, to be utilized in the swordfish handgear fishery only. NMFS took this action, in part, to limit the number of individual gears a vessel may possess or deploy when targeting swordfish commercially and eliminate the use of the gear in all other HMS fisheries, both recreational and commercial. Vessels with directed swordfish or swordfish handgear LAPs may utilize this gear type to capture swordfish in pelagic longline closed areas as long as the longline gear had been removed from the vessel.

Comment 25: NMFS received several comments opposed to alternative H5, which would authorize buoy gear for the commercial swordfish handgear fishery and limit vessels to possessing or deploying no more than 35 individual buoys, with each gear deployed consisting of one buoy supporting a single mainline with no more than two hooks or gangions attached. The comments include: buoy gear is needless and would be harmful to recreational interests; recreational fishermen are concerned about the use of this gear type; buoy gear would increase fishing effort on swordfish when it is still overfished; opening up the buoy fishery to fill the quota is a mistake; buoy gear is indiscriminate and destructive and has no place in a sustainable, viable fishery; buoy gear is nothing more than a vertical longline and we need reductions in bycatch or bycatch mortality. We are opposed to any fishing that allows unattended gear; buoy gear should not be allowed in the HMS fisheries for numerous reasons, including: a hazard to navigation; an indiscriminate killer like longlines; and deployment of the gear with live baits will increase discards and dead discards of numerous species; if buoy gear use continues, it is probable that the gear will interact with marine mammals in the U.S. EEZ; and it is morally incomprehensible that NMFS is going to shut down the recreational white marlin fishery and yet allow thousands of hooks to be deployed with live baits on buoy gears.

Response: As discussed in the Consolidated HMS FMP, this gear type is currently in use as handline gear and anecdotal information suggests that it is being used by both commercial and recreational fishermen to target swordfish as well as other species. The rule will re-name the gear to buoy gear, limit its use to only those vessels permitted to participate in the limited access commercial swordfish handgear fishery, and significantly limit the number of individual gears that vessels could possess or deploy (from an unrestricted number to a maximum of 35). This action will ensure that the fishery, which currently occurs mainly in a known swordfish nursery area, does not expand in effort uncontrollably and that only a manageable number of buoy gears may be deployed by each vessel. Consistent with the current definition of ''handline gear,'' each buoy gear will be limited to having no more than two hooks or gangions attached. Vessels deploying buoy gear may use live or dead baits and may only retain swordfish captured on the gear. All tunas, undersized swordfish, sharks, marlins, or sailfish captured on buoy gear must be released in a manner that maximizes their probability of survival. This gear differs significantly from longline gear, which is defined as having three or more hooks or gangions attached. The rule will allow vessels deploying this gear type to use multiple floatation/gear marking devices, including but not limited to, buoys, floats, lights, radar reflectors, reflective tape, and high-flyers, to minimize any hazards to navigation. Logbook data from 2004 show that 68 percent of swordfish captured on commercial handline trips were retained. These same data show that over 75 percent of swordfish discarded from these trips were released alive. NMFS monitors gears for interactions with marine mammals and sea turtles and will continue to monitor buoy gear catch, bycatch, and any interactions with protected resources though the HMS logbook program.

Comment 26: If handgear must be attached to the vessel, how do the buoy gear requirements affect alternative H5, which authorizes buoy gear in the commercial swordfish handgear fishery, and limits vessels employing buoy gear to possessing and deploying no more than 35 individual buoys, with each buoy having no more than two hooks or gangions attached?

Response: Handgear (handline, harpoon, rod and reel, and bandit gear) are not all currently required to be attached to a vessel. This final rule will modify the definition of handline to require that handlines be attached to, or in contact with, a vessel. The buoy gear alternatives will not be affected by the handline definition change as the selected buoy gear alternative defines buoy gear as a separate gear type.

Comment 27: NMFS received a few comments opposed to alternative H6, authorize buoy gear in the commercial swordfish handgear fishery and limit vessels to no more than 50 individual buoys, each supporting a single mainline with no more than 15 hooks or gangions attached. These comments include: we do not support alternative H6; and alternative H6 is mini-longlining and should be limited to vessels with all three permits (Directed or Incidental Swordfish, Atlantic Tunas Longline, and Directed or Incidental Shark).

Response: The Agency is not selecting alternative H6 due, in part, to the comments in opposition to allowing that many free floating buoy gears. In this action, the Agency is selecting a modification of alternative H5 which will authorize buoy gear for the commercial swordfish handgear fishery and limit vessels to possessing or deploying no more than 35 floatation devices, with each gear consisting of one or more floatation devices supporting a single mainline with no more than two hooks or gangions attached. This gear differs significantly from longline gear, which is defined as having three or more hooks or gangions attached. Fishermen deploying buoy gear must possess a commercial swordfish handgear or a swordfish directed limited access permit.

Comment 28: NMFS received a number of comments regarding buoy gear capturing undersized swordfish, including: 35 individual buoys fished at one time is in direct conflict with the HMS FMP objective to reduce bycatch and to minimize mortality of juvenile swordfish; this alternative will produce dead juvenile swordfish that are hooked and not successfully released due to lost gear or gear that cannot be checked in a timely manner; what studies show the successful release of juvenile swordfish when using 35 individual buoys with two hooks?; buoy gear fishermen currently catch approximately 25 - 30 percent juvenile swordfish (< 33 inches); circle hooks can reduce post release mortality of juvenile swordfish and non-targeted species, they should be considered for this gear; and, about 50 percent of fish caught on well tended buoy gear can be released.

Response: In response to public comment, the Agency has modified the draft preferred alternative to allow buoy gear fishermen the option of deploying

multiple floatation devices on individual buoy gears. The final rule will maintain the maximum limit of 35 floatation devices possessed or deployed. Under this rule, fishermen who fish three floatation devices per gear will be limited to deploying approximately 11 individual buoy gears. Similarly, fishermen using four floatation devices per gear will be limited to deploying approximately eight buoy gears. Logbook data from 2004 show that 68 percent of swordfish captured on commercial handline trips were retained. These same data show that over 75 percent of swordfish discarded from these trips were released alive. Given the fact that this fishery currently happens in a swordfish nursery area, it is likely that the swordfish that are discarded are done so because they are undersized. Commenters requested the ability to use several floatation devices per gear to allow for the use of a ''bite indicator'' float, which will let fishermen know when a fish is captured by the gear. This modification could allow fishermen to easily identify those gears that have captured fish and may allow fishermen to release any undersized swordfish or non-target species more quickly and with a greater probability of survival. Additionally, the modification to allow multiple floatation devices per gear may reduce the number of gears deployed and may minimize lost gear by making the gears more buoyant and visible. Although the Agency received public comment supporting the use of circle hooks with buoy gear, a circle hook option was not specifically included in the alternatives in the Draft Consolidated HMS FMP. NMFS is considering the utility of circle hooks throughout HMS fisheries and may analyze a circle hook requirement for buoy gear in a future rulemaking.

Comment 29: NMFS received a few comments related to the monitoring requirements for buoy gear. Such comments include: can fishermen use additional locating devices in addition to the single buoy required (e.g., high flier to locate the buoy in bigger seas) to improve monitoring?; all four methods of marking buoy gear are needed to avoid lost fish and gear; there should definitely be a requirement for marking and monitoring; a visual radius or reasonable area a fisherman could fish with buoy gear should be defined; buoy gear ''tending'' requirements should be defined, like in the shark gillnet fishery, to prevent fishermen from tending buoys that belong to others; it would be impossible to monitor all 35 buoys that are free floating in rough weather conditions; while the handgear operator is retrieving a buoy that has hooked a swordfish of sustainable size, the other 34 buoys will not be attended; there are no minimum requirements for flags, radar reflectors, radio beacons, or strobe lights; and is there any information about the loss of buoys?

Response: In response to public comment, the Agency has modified the draft preferred alternative to allow buoy gear fishermen the option of deploying multiple floatation devices on individual buoy gears. The final rule will maintain the maximum limit of 35 floatation devices possessed or deployed. Under the modified alternative, fishermen who fish three floatation devices per gear will be limited to deploying approximately 11 individual buoy gears. Similarly, fishermen using four floatation devices per gear will be limited to deploying approximately eight buoy gears. If a gear monitoring device used by a fisherman is positively buoyant, it will be included in the 35 floatation device vessel limit. Consistent with current regulations, each floatation device attached to a buoy gear must be marked with either the vessel's name, registration number, or permit number. At this time, NMFS is not requiring any specific gear tending requirements for vessels deploying buoy gear; however, the Agency recommends that fishermen remain in the general area where they have set their gear and monitor each gear as closely as possible. NMFS realizes that different vessels and crews will have varying abilities to monitor gear and that weather and sea condition may also impact their ability to monitor gear closely. The Agency cautions fishermen to limit the number of gears they deploy to a reasonable number that they can realistically monitor and retrieve safely. At this time, the Agency does not possess any data regarding gear loss in this fishery. The Agency may conduct additional rulemaking in the future, if additional data indicates that gear tending requirements or other bycatch reduction measures are needed.

Comment 30: NMFS received a number of comments regarding the definition of ''buoy gear,'' including: consider modifying the definition of buoy gear because one buoy and all the line fished vertically will make it difficult to keep visual contact with the gear; without some way of knowing when a small fish is hooked, it may be several hours before the gear is retrieved; consider allowing a maximum of 20 feet of horizontal line on the surface for the purpose of identifying and monitoring buoy gear allowing space for ''bite indicator'' float and an identification buoy/hi-flier; additional equipment may be necessary to prevent large swordfish from sounding; allow additional gear at each buoy for retrieval and to determine if a fish is on the line; why is there no length or distance specified between buoys for the commercial buoy gear?; do the regulations stipulate how far apart the buoy gear can be spaced?; are buoy gears allowed to be attached to a hydraulic drum when being used commercially?; circle hooks, VMS, light sticks, live bait, and Careful Handling/Release training and certification should be mandatory; could you require the use of Global Positioning Systems (GPS) on the buoy gear?; there should be a prohibition on using live bait; an electronic monitoring system must be required for each buoy; there is no data to justify limitations on the number of buoys and/or hooks at this time; and there is no criteria for what would constitute an acceptable buoy for this type of gear.

Response: As discussed above in the response to Comments 27, 28, and 29, NMFS has modified the draft preferred alternative in response to public comment and included a definition of ''floatation device.'' The final rule will allow fishermen deploying buoy gear to attach multiple floatation devices to each buoy gear, including ''bite indicator floats,'' however the rule will maintain the limit of 35 floatation devices possessed or deployed. A floatation device is defined as any positively buoyant object rigged to be attached to a fishing gear. Buoy gear must be released and retrieved by hand. If gear monitoring devices used by fishermen are positively buoyant and rigged to be attached to a fishing gear, they will be included in the 35 floatation device vessel limit and will need to be marked as per the gear marking regulations. Additionally, if more than one floatation device is used, no hook or gangion may be attached to the mainline or a floatation device on the horizontal portion of the gear. At this time, NMFS is not specifying any maximum or minimum length of horizontal line at the surface. However, to limit any hazard to navigation and potential gear loss by ship strike, NMFS recommends that fishermen set only the amount of gear that is needed at the surface. Similarly, NMFS is not specifying a minimum or maximum distance between deployed buoy gears. NMFS urges fishermen to be responsible in their fishing activities and to only fish gear over a distance that they can realistically monitor. Because of the limitations on the number of buoy gears that can be deployed at one time, NMFS

is not requiring GPS or electronic monitoring equipment at this time. Given the low bycatch rates and high probability of survival per logbook data on handline, NMFS is not implementing requirements regarding circle hooks, light sticks, live bait, or Careful Handling/Release training and certification for buoy gear fishermen at this time. As more information and data become available regarding the use of buoy gear, NMFS may investigate some of these options for the buoy gear fishery in future rulemakings.

Comment 31: NMFS received a few comments regarding permit requirements for using buoy gear and comments supporting a limit on the number of vessels using buoy gear. These comments include: buoy gear should be limited to current permit holders only and no increase in its use should be allowed in future permit considerations; what kind of permit do you need for buoy gear?; buoy gear users should have the three permits that PLL needs; approximately 10 boats have used buoy gear in the past, however, it is now likely that only about three vessels use this gear type; how many participants are actively using buoy gear?; and, how many swordfish permits are there? Effort is going to increase.

Response: The final rule will only authorize buoy gear in the commercial swordfish handgear fishery. Vessels deploying buoy gear must have a commercial swordfish handgear limited access permit or a swordfish directed limited access permit. As of February 2006, there were 88 commercial swordfish handgear permits and 191 directed swordfish permits. In 2004, seven vessels reported using handline gear in the HMS logbook. The logbook does not differentiate between trolled handlines, free-floating handlines, or attached handlines; however, some of those seven vessels likely fished free-floating handlines (buoy gear) and targeted swordfish. Based on historic participation and new restrictions, NMFS does not anticipate large increases in participation in this sector of the swordfish fishery.

Comment 32: NMFS received two comments inquiring about 35 buoys as the appropriate limit for buoy gear. These comments are: what is the basis for selecting 35 buoys as the limit?; and, how did the Agency select 35 buoys?

Response: NMFS selected the 35 floatation limit based on support from public comment and because the Agency identified this number as the upper limit of unattended buoy gear that a commercial fisherman could monitor and prevent from being lost. The 35 floatation limit would also allow most vessels using this gear to possess spare gear onboard. Furthermore, as described in the response to Comments 29 and 30, NMFS modified the definition to allow for multiple floatation devices per individual buoy gear. This upper limit should provide flexibility and allow for the use of ''bite indicator'' floats by most fishermen using this gear.

Comment 33: NMFS received a number of comments on the proposed limit of 35 buoys, including: tending 35 buoys will be inefficient, taking 2 - 2.5 hours to set 35 buoys and 3 - 3.5 hours to check each one; no more than 12 buoys should be allowed when operating alone; with two crew members, up to 20 buoys could be fished; can the number of permissible buoys be linked to people onboard the vessel; participants currently cannot fish 35 buoys but may be able to in the future; 35 buoys with two hooks apiece is almost like hauling a 30 mile longline with the current; define and allow this gear type for swordfish commercial harvest, but limit the number of buoys to a more manageable number for protection of juvenile swordfish, allowing no more than 10 buoys makes the gear maintainable and produces a high quality product with minimal impact on juvenile fish; 35 buoys are unmanageable and are tended exactly like a short pelagic longline with overnight soak time violating the intent of the area closure; 10 to 12 buoys with a maximum of two hooks is the most that should be allowed, a prudent skipper and crew could not manage more than 10 buoys at a time and that would be under ideal sea conditions; The regulations should allow a maximum of 10 to 12 buoys, otherwise bycatch cannot be prevented; 35 buoys with two hooks each is not considered ''handgear''; and, 35 buoys are far too many and may allow bigger vessels from the NED to move in and use this gear in closed areas, this shift could create tension between user groups and, displace the smaller vessels that pioneered this type of gear. This already happened in the FEC area with a boat using 20 - 25 radio buoys; 35 buoys are unmanageable; more than 12 buoys are unmanageable. The definition of this gear should be by the drop line, not the number of buoys; pelagic longline fishermen would need more than 35 buoys to make a go of the buoy fishery; and there is no data that shows a limit on buoy gear is needed.

Response: In response to public comment, the Agency is selecting a modification of alternative H5 that will authorize buoy gear for the commercial swordfish handgear fishery and limit vessels to possessing or deploying no more than 35 floatation devices, with each gear consisting of one or more floatation devices supporting a single mainline with no more than two hooks or gangions attached. As discussed above in the response to Comments 27 - 30, the modified alternative will allow fishermen deploying buoy gear to attach multiple floatation devices to each buoy gear, including ''bite indicator'' floats, however the alternative maintains the limit of 35 floatation devices possessed or deployed. This rule gives greater flexibility in the gear configuration by allowing fishermen to alter the gear depending on weather or sea conditions, crew size, and characteristics of different fishing vessels. If gear monitoring devices used by fishermen are positively buoyant and rigged to be attached to a fishing gear, they will be included in the 35 floatation device vessel limit and will need to be marked in accordance with the gear marking regulations. Additionally, if more than one floatation device is used, no hook or gangion may be attached to the mainline or a floatation device on the horizontal portion of the gear. Under the final rule, fishermen who fish three floatation devices per gear will be limited to deploying approximately 11 individual buoy gears. Similarly, fishermen using four floatation devices per gear will be limited to deploying approximately eight individual buoy gears. NMFS realizes that different sized vessels and crews will have varying abilities to monitor gear and that weather and sea conditions may also affect their ability to monitor gear closely. The Agency cautions fishermen to limit the number of buoy gears they deploy to a reasonable number that can be realistically monitored and retrieved safely. NMFS realizes that the limits on buoy gear will likely reduce the chances that large distant water vessels could make profitable trips with buoy gear. During the scoping process, the Agency received comments indicating that the swordfish handgear fishery does not appear to be widespread and appears to operate off the East Coast of Florida. The final rule was developed in an attempt to maintain positive economic benefits for the commercial sector currently utilizing the gear type.

Comment 34: NMFS received a number of comments opposed to authorizing buoy gear and the use of buoy gear in pelagic longline closed areas. Those comments include: the proposed buoy gear would operate in a manner similar to longline gear. Do not reopen the longline fishery to further commercial exploitation in our waters; buoy gear is proposed for use in areas

currently closed to longline gear; this commercial gear violates the intent and purpose of closed areas and the basic reason these areas were originally created; how do these new proposed gears mesh with the current closed areas?; longline fishermen are by far the most indiscriminate killers of the very species that recreational fishermen and conservation groups try to protect. Yet, they are being allowed back into closed areas and are allowed to continue using longline tackle that has been renamed; these areas were closed to PLL and allowing buoy gear in will eliminate any benefits that the closures had; and, all the issues for PLL seem to be there for buoy gear. Bycatch issues are still there.

Response: The final rule will re-name free-floating handline gear as ''buoy gear,'' limit vessels deploying the gear to possessing or deploying no more than 35 floatation devices, and will limit its use to commercial swordfish handgear fishermen. Therefore, this rule represents a limitation on the handgear fishery over the status quo, and is not modifying any current restrictions on longline fishing. This gear has been utilized with no gear limits by both recreational and commercial fishermen in areas closed to pelagic longline fishing in the past and will be prohibited for use by recreational fishermen and all commercial fishermen not possessing a swordfish handgear or swordfish directed limited access permit. The continued use of this gear by a limited number of fishermen would not violate the intent and purpose of the East Florida Coast closed area (or other PLL closed areas), which was to minimize bycatch in the PLL fishery while maximizing the retention of target species. Current data regarding the existing handline fishery indicates that bycatch rates with this gear are low with no marlin or sea turtles being reported caught from 2000 to 2004, and only one sailfish, which was released alive.

Comment 35: NMFS received several comments expressing concern over the authorization of buoy gear in the East Florida Coast PLL closed area, including: pelagic longline vessels once contributed to a vast amount of dead discards of juvenile swordfish in the East Florida Coast area and buoy gear will have the same effect; the East Florida Coast closed area is a vital nursery area that needs to be protected; there should be no free-floating gear allowed in the Florida Straits; buoy gear is like longline gear, and NMFS should ban longlining for swordfish in the Florida Straits; to fish buoy gear in the Straits of Florida the handgear operator must ensure 100 percent release of juvenile swordfish; and, a limit might be necessary off Florida, but there might be possibilities in other areas where limits are not needed.

Response: As discussed in the response to Comment 34 above, the final rule will restrict the number of unattached handlines or buoy gear that may be deployed and will limit the number of permit holders authorized to utilize the gear type relative to the status quo. This gear is currently authorized for use with no limitations on numbers of buoy gears deployed by both recreational and commercial fishermen in the East Florida Coast closed area. The final rule will prohibit all recreational fishermen and commercial fishermen not possessing a swordfish handgear or swordfish directed limited access permit from utilizing the gear type. According to 2004 logbook data, 64 commercial handline trips were reported with 404 swordfish reported caught. Of those 404 swordfish captured, 67.8 percent (274 fish) were retained, 24.3 percent (98 fish) were released alive, and 7.9 percent (32 fish) were discarded dead.

Comment 36: NMFS received several comments concerned about allowing buoy gear to operate in the Gulf of Mexico. Those comments include: buoy gear should not be allowed in the DeSoto closures area, nor should it be allowed in the Southern Canyon area. There should be no free floating gear because it could get entangled with oil rigs; buoy gear may need greater restrictions in the Gulf. I am worried about excessive gears and bycatch with the currents and weather; concerns on how buoy gear will be deployed in the Gulf of Mexico with free floating drilling barges and their multiple thrusters, may lead to pollution issues; future generations will suffer and only one group will benefit from allowing 30 - 50 hook sets with no radar reflectors into the DeSoto area south of Destin. After the buoy fishermen have moved on, there will never be another blue marlin, swordfish, tuna, or shark in the Gulf of Mexico; the De Soto Canyon pelagic longline closure has been successful over the past five years with more tuna, dolphin, swordfish, and wahoo; and buoy gear should be banned completely from the Gulf of Mexico.

Response: During the scoping process, the Agency received comments indicating that the swordfish handgear fishery does not appear to be widespread and appears to operate only off the East Coast of Florida, not in the Gulf of Mexico. As discussed under Comment 34, the final rule will restrict the number of unattached handlines or buoy gear that may be deployed and the number of permit holders authorized to utilize the gear type relative to the status quo. In addition, the requirement to affix gear monitoring equipment is intended to reduce the likelihood of gear loss. Additionally, under the final rule, buoy gear will only be authorized to harvest swordfish, no other HMS species may be targeted with buoy gear. All other HMS species captured must be released in a manner that maximizes their probability of survival. NMFS will monitor bycatch and gear loss, and may make adjustments, as needed, in the future. While the owners and operators of buoy gear vessels are not required to attend the safe handling and release workshops that are mandatory for PLL, BLL, and gillnet fishermen, these owners and operators may use the same release techniques and equipment and are encouraged to attend. If bycatch rates or mortality increase in the buoy gear fishery, NMFS may consider mandatory workshops for this fishery. Similarly, if the fishery expands into the Gulf of Mexico, NMFS may consider additional restrictions to prevent problems with free floating drilling barges or to alleviate other problems not anticipated at this time.

Comment 37: NMFS should consider geographic limitations for buoy gear to minimize negative gear conflicts in a future action.

Response: During the scoping process, the Agency received comments indicating that the existing swordfish handgear fishery does not appear to be widespread and appears to operate only off the East Coast of Florida. NMFS does not expect that this final action, which places limits on that existing fishery, would change the location of the fishery. However, if circumstances warrant changes, the Agency may consider making adjustments to minimize negative impacts in the future, if necessary.

Comment 38: There is no penalty for clipping the buoy gear together to create a longline.

Response: Under the current regulations, lines with three hooks or more are longlines. Vessels clipping buoy gears together and having more than two hooks on any combination of lines would need the appropriate permits allowing the operators to harvest HMS with longline gear. Additionally, these vessels could only set linked buoy gear in areas not closed to longline fishing. The final rule prohibits linking buoy gear together.

Comment 39: Buoy gear exponentially increases the footprint of the vessel because it is not attached to the vessel. It will become entangled in offshore oil platforms and dynamic positioning vessels, and other oilfield related

facilities and will result in more stand-off regulations for the recreational and commercial fisheries from these structures, not to mention the additional expense to the oil companies of removing this gear and repairing damage caused by it.

Response: As discussed under Comment 34, the final rule will restrict the number of unattached handlines or buoy gear that may be deployed and the number of permit holders authorized to utilize the gear type relative to the status quo. In addition, the requirement to affix gear monitoring equipment is intended to reduce the likelihood of gear loss.

iv. Secondary Gear

Comment 40: NMFS received comments on the types of secondary gears (also known as cockpit gears) that would be authorized under the proposed Consolidated HMS regulations. Those comments include: what are the primary cockpit gears included for authorization?; will the regulations have a list of acceptable cockpit gears because that list is going to be extremely long to cover all the methods currently used?; people are going to need to provide NMFS with a list of gears currently used to be sure they are included; do not allow dart harpoons and other secondary gears to be used as primary authorized gears; mechanical harpoons should not be used as secondary gear; and, if there is choice between a gaff, flying gaff, and cockpit harpoon, I am going for a cockpit harpoon every time to kill fish and protect myself.

Response: The final rule does not list specific acceptable secondary gear; rather, secondary gears will be authorized for assisting in subduing an HMS already brought to the vessel with an authorized primary gear. Primary authorized gears are listed in the current HMS regulations at 50 CFR 635.21(e). While examples of secondary gears are listed in the regulations, the list is not all inclusive in order to provide fishermen the maximum flexibility in using the secondary gear to gain control of an animal that will be brought onboard the vessel while also maintaining safe conditions on the vessel. This action will clarify the regulations to state that secondary gears will not be allowed to capture undersized or free-swimming HMS, but only to gain control of legal-sized HMS brought to the vessel with an authorized primary gear with the intent of retaining the HMS. This measure will acknowledge and account for the current HMS regulations at 50 CFR 635.21(a), which state that an Atlantic HMS harvested from its management unit that is not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

Comment 41: NMFS received comments supporting the use of secondary gears. Those comments include: I support alternative H7, clarify the allowance of handheld cockpit gears used at boat side for subduing HMS captured on authorized gears; hand darts need to be authorized as secondary gear so that the people in Florida's swordfish recreational fishery are not fishing illegally; and this action is necessary to avoid enforcement conflicts over what gear is legal for subduing HMS.

Response: The final rule authorizes the use of hand-held secondary gears to aid anglers in subduing large HMS captured by authorized primary gear types to reduce the loss of fish at the side of the boat, increase safety when subduing large HMS, minimize enforcement problems, and respond to requests from fishery participants to clarify the regulations. This action does not specify acceptable secondary gears, rather it clarifies the HMS regulations to state that secondary gear may be used to aid in the landing or subduing of HMS after they are brought to the vessel using a primary authorized gear type only. Secondary gears may also reduce the loss of fish at boat side, increasing retention rates. Primary authorized gears are listed in the current HMS regulations at 50 CFR 635.21(e).

D. Regulatory Housekeeping Measures

i. Definitions of Pelagic and Bottom Longline

Comment 1: NMFS received comments in support of the no-action alternative to maintain the current PLL and BLL gear definitions, and a comment in support of the two alternatives that were preferred in Draft Consolidated HMS FMP. These included: I support Alternative I1(a) — no action. The other alternatives tend to micromanage directed shark fishermen out of the closed areas, in particular the NC BLL time/area closure, by reducing profits and causing unnecessary economic impacts; if fishermen can tell the difference between BLL and PLL gears, they should be able to teach NMFS enforcement agents the difference; it is still clear that there is a problem with the BLL and PLL definitions. NMFS should reexamine this issue with some fishing industry assistance; and, NMFS is making a big deal and creating potential additional economic impacts for enforcement's convenience. It is not an enforcement necessity; and PLL and BLL gears should be differentiated by the number of floats (alternative I1(b)), as well as the types of species landed (alternative I1(c)).

Response: NMFS believes that the existing regulations defining pelagic and bottom longline gear at § 635.21(c) and (d), respectively, are generally sufficient. However, there could be situations where it is difficult for law enforcement to differentiate between the two gear types while enforcing the closed areas or VMS regulations. Difficulties could arise, for example, in determining whether the weights and/or anchors are capable of maintaining contact between the mainline and the ocean bottom in the case of bottom longlines, or whether the floats are capable of supporting the mainline in the case of pelagic longlines. These difficulties could result in lengthier boardings at sea by law enforcement, temporary curtailment of fishing activities, and potential legal proceedings. For these reasons, NMFS sought to reexamine the current PLL and BLL definitions in this amendment to ascertain whether improvements were warranted. Based upon public comment and consultations with law enforcement, NMFS found that the current PLL and BLL definitions could be strengthened by establishing limits on the types of species that could be possessed when fishing in HMS closed areas with these gears. However, in order to maintain operational flexibility for the HMS longline fleet, and in recognition of the impracticality of defining and limiting the number of ''fishing floats'' possessed or deployed, gear-based alternative I1(b) is no longer preferred. The overall objective of this issue, preserving the integrity of the HMS time/area closures, can effectively be achieved by implementing requirements on the species composition of catch. This methodology addresses the crux of the issue, which is to discourage catches of pelagic species in PLL closed areas (and vice versa), without the adverse economic impacts associated with additional gear restrictions. This method is expected to accommodate the majority of commercial fishing operations, yet still provide a quantifiable means to differentiate between PLL and BLL vessels. As a result, the ecological benefits associated with HMS closed areas are expected to remain intact, including reductions in discards of swordfish, bluefin tuna, dusky sharks, sandbar sharks, other HMS, other

finfish, and protected species. By selecting a method that relies upon the species composition of the catch, NMFS anticipates that HMS longline vessel operators will be prudent when fishing in the HMS closed areas and catch predominantly pelagic species in BLL closed areas, or demersal species in PLL closed areas. However, the establishment of quantifiable gear-based criteria to differentiate between PLL and BLL gear could still potentially offer an effective method to further eliminate ambiguities between the two gear types. The Agency intends to continue to assess the need for, and potential effectiveness of, gear-based criteria. If needed, such criteria could be developed in consultation with the fishing industry to further improve the monitoring of, and compliance with, HMS closed areas.

Comment 2: NMFS received several comments indicating that HMS longline vessel operators need to maintain their operational flexibility. These comments include: Longline vessels need to maintain their ability to change between PLL and BLL gear in order to ensure versatility. For economic survival and efficiency, vessels often conduct both PLL and BLL sets on a single trip. This is especially true for PLL vessels that fish with BLL gear during rough weather days on a PLL trip. There will be an economic loss if NMFS restricts this flexibility; definitions for PLL and BLL gear should be developed to facilitate identification by law enforcement, while not precluding fishermen from choosing between gear types; and in order to allow flexibility to conduct both PLL and BLL sets, the final regulations may need to specify differences between active gear and gear onboard the boat and not in use, because there have been some enforcement errors.

Response: NMFS recognizes that HMS longline vessels need to maintain their ability to change between PLL and BLL gear in order to ensure versatility. The reason for addressing the gear definition issue in this amendment was not to impose additional economic costs on longline vessels, but rather to preserve the conservation benefits associated with the HMS time/area closures. The HMS longline closed areas were implemented to protect a variety of HMS and other protected species. This protection could be compromised if HMS longline vessels are catching large amounts of pelagic species in the PLL closed areas, while under the guise of BLL fishing, and vice-versa. The critical factor in maintaining the integrity of the HMS time/area closures is, therefore, to ensure that the proper species are hooked. This could potentially be accomplished in a variety of ways. NMFS believes that establishing a limit on the species composition of the catch when fishing in the HMS closed areas is an efficient method to discourage illegal fishing activities in these areas, without imposing additional gear requirements that could restrict operational flexibility. As long as a vessel is in compliance with the current PLL or BLL definitions when fishing in the HMS closed areas, the operator will retain the flexibility to choose how to comply with the catch limits specified in this final rule. More importantly, however, these catch limits must be adhered to if any portion of a trip is in an HMS closed area. NMFS believes that it is not unreasonable, or unduly burdensome, for HMS longline vessels to comply with the intent of the HMS closed areas and to avoid pelagic or demersal species, especially when legally fishing in these areas with BLL or PLL gear, respectively. Because NMFS is implementing a species-based, rather than a gear-based, alternative to differentiate between pelagic and bottom longlines, a gear stowage provision is not necessary at this time.

Comment 3: Comments were received indicating that vessel monitoring systems (VMS) could be used to help differentiate between PLL and BLL vessels. These comments included: Since VMS are already required for the closed areas, NMFS should establish a declaration system allowing the VMS monitors to know what gear type is being utilized and why. Law enforcement and/or observers could verify compliance, and impose penalties for non-compliance; and, it has been suggested that vessels ''call-in'' and declare their intentions prior to engaging in fishing in a closed area. This would be an unnecessary burden, but it is feasible.

Response: This comment was also raised by both the public and the NMFS Office of Law Enforcement during scoping hearings, and was considered during the development of alternatives for the DEIS. However, NMFS decided against including an alternative with a VMS declaration because it would not alleviate the need for a quantifiable method for enforcement to use in order to differentiate between PLL and BLL gear. For example, while a vessel operator could declare to be fishing with PLL or BLL gear, enforcement officers would still need to verify compliance with the closed areas either at the dock or at sea. Without a quantifiable method, enforcement officers could decide that a BLL vessel that has a few buoys onboard and that declared itself a BLL vessel still meets the definition of a PLL vessel. With a quantifiable method, the enforcement officers would be less likely to make that determination. Nevertheless, there may be a potential benefit to a VMS declaration system, and NMFS will continue to assess the need for such a system.

Comment 4: Comments opposed to alternative I1(b), defining BLL or PLL gear based on the number of floats onboard, included: We are strongly opposed to alternative I1(b); defining BLL and PLL gear by the number of floats will not work; and, alternative I1(b) would impose an unnecessary additional economic and logistic burden on already over-regulated fisheries.

Response: Although the analysis in the Draft Consolidated HMS FMP indicated that relatively few HMS longline vessels would be affected by the float requirement in non-selected alternative I1(b), the alternative is not being implemented in the final rule. As described in Comment 2 above, several commenters stated that a float requirement would diminish the flexibility of vessel operators to participate in different fishing activities, depending upon the circumstances. Also, consultations with NMFS Office of Law Enforcement indicated that defining ''fishing floats'' and limiting the number that could be possessed or deployed would not be practical. In light of these concerns, NMFS believes that the overall objective of this issue, preserving the integrity of the HMS time/area closures, can effectively be achieved by implementing a method that relies upon the species composition of catch and the existing PLL and BLL definition. By not implementing a restriction on the allowable number of floats, potential adverse economic impacts associated with additional gear restriction should be mitigated

Comment 5: NMFS received many comments regarding the float requirement in alternative I1(b), and suggestions for developing other gear-based methods to better differentiate between PLL and BLL. These comments include: There is some confusion in preferred alternative I1(b) between the terminology that the industry is accustomed to using versus what NMFS is using; how do the proposed regulations define PLL and BLL gear and floats?; floats are used for recovery and monitoring sections of the gear. The types of mainline and anchor are related to where the gear is fishing in the water column. The mainline and anchors onboard a vessel would be better indicators of what type of longline gear is onboard a vessel; if NMFS proceeds

with alternative I1(b), it is important to make sure that an anchor ball is accounted for in the float enumeration; there is no critical need for BLL vessels to possess ''bullet'' type floats. Such floats can be replaced with polyballs on BLL vessels at minimum costs. On the contrary, PLL vessels must carry large quantities of both polyball and ''bullet'' floats, this difference would enable enforcement officers to differentiate between PLL and BLL vessels while underway and/or fishing. NMFS could allow PLL vessels to retain the necessary flexibility if they required all ''bullet'' type floats to be stowed below deck and/or completely covered before engaging in BLL fishing in a PLL closed area. It would be awkward but it is feasible; NMFS enforcement should not require an adjustment to the definition. A PLL vessel is easy to spot by the amount of ''bullet'' floats and balls. While deployed, the gear is easy to determine by the consecutive ''bullet'' floats along the line. When a PLL vessel is engaged in BLL fishing, there is no consecutive string of ''bullet'' floats and a BLL vessel does not require hundreds of bullet floats; and, on the Grand Banks, fishermen use polyballs, bullet floats and radio buoys, but I do not know the exact number of each; Radio buoys are probably used more with PLL than with BLL gear.

Response: NMFS appreciates these comments. The proposed regulations did not contain new definitions for PLL and BLL gear, and did not define ''fishing floats.'' Rather, comments were specifically requested on potential definitions for ''fishing floats.'' While differences between PLL and BLL gear might be readily apparent, these comments highlight the difficulties associated with developing definitions that are quantifiable, understandable, practical, enforceable, and can accommodate a variety of different fishing techniques. These limitations greatly restrict the ability to develop practical, quantifiable definitions for PLL and BLL gear that are improvements over the existing definitions. For these reasons, and for those discussed in the response to Comment 1 above, NMFS believes that the current PLL and BLL definitions do not require significant modification, but can be strengthened by establishing limits on the types of species that can be possessed when fishing in HMS closed areas. In order to maintain operational flexibility for the HMS longline fleet, and in recognition of the impracticality of defining and limiting the number of ''fishing floats'' possessed or deployed, the allowable number of floats is not limited. Nevertheless, the establishment of quantifiable gear-based criteria to differentiate between PLL and BLL gear using the recommendations contained in this comment could help to eliminate ambiguity between gear types in the future, if necessary. NMFS will continue to assess the need for, and potential effectiveness of, gear-based criteria. If needed, such criteria could be developed in consultation with the fishing industry to further improve the monitoring of, and compliance with, HMS closed areas.

Comment 6: Comments regarding the numbers of floats specified in alternative I1(b) included: The number of floats proposed for the PLL/BLL designation in alternative I1(b) (i.e., 71 or more floats for PLL) is appropriate, but fishermen could run into trouble with enforcement during test sets. These are sets fishermen use to determine what fish, if any, are in the area. Test sets are usually shorter and have fewer floats; NMFS is proposing too many floats to differentiate between BLL and PLL gear in alternative I1(b). BLL gear would have far fewer floats. Most BLL may have two to four floats with maybe a 12 to 15 maximum; and, a fisherman may do a short PLL set that would have less than 71 floats when fishing in closed areas and might be able to catch demersal fish, like sandbar sharks, on PLL gear.

Response: Based upon an analysis of the HMS logbook in the Draft Consolidated HMS FMP, NMFS believes that the number of floats specified in the proposed rule to differentiate between PLL and BLL gear was appropriate. The analysis indicated that at least 90 percent of all reported BLL sets in 2002 and 2003 possessed fewer than 70 floats, and approximately 95 percent of all reported PLL sets in 2002 and 2003 possessed more than 70 floats. However, public comment indicated that, in some instances, the float requirement could adversely affect operational flexibility. For this reason, and the others discussed in the responses to Comments 4 and 5 above, the allowable number of floats is not being limited. NMFS believes that the concern expressed in this comment regarding catching demersal fish on PLL gear in BLL closed areas will be adequately addressed by the final management measures, that limit the amount of species (either pelagic or demersal, as appropriate) that may be possessed or landed from HMS closed areas.

Comment 7: Alternative I1(b) may assist in defining ''greenstick gear'' by specifying the numbers of floats for pelagic and bottom longlines.

Response: The issues involved in defining ''greenstick gear'' are addressed in the Authorized Fishing Gear section. NMFS is not implementing management measures that would specify the allowable number of floats for PLL and BLL gear. If needed in the future, NMFS may consider distinguishing between greenstick and longline gear based upon the allowable number of floats.

Comment 8: NMFS received comments in opposition to alternative I1(c), including: I vehemently oppose preferred alternative I1(c) which differentiates between BLL and PLL gear based upon the species composition of the catch. There is no difference between PLL and BLL gear. BLL gear takes so long to set and retrieve that it can kill pelagic species while the hooks are being retrieved. Enforcement will be ineffective on this alternative. What is a vessel considered to be, PLL or BLL, after it has just switched from one mode to the other prior to harvest in the second mode?; and, I am opposed to this alternative because it will limit the abilities of the directed shark fishery.

Response: There is a difference between PLL and BLL gear. PLL gear fishes for pelagic species in the water column, while BLL gear fishes for demersal species and is in contact with the seafloor. Although the gears can each catch both types of species, the catch rates of demersal and pelagic species are very different between the gears. This fact is evident in the Coastal logbook where, on average, from 2000 - 2004, over 95 percent of the reported landings were demersal ''indicator'' species, as measured relative to the total amount of ''indicator'' species. Similarly, in the PLL logbook, from 2000 - 2004, on average, over 95 percent of the reported landings were pelagic ''indicator'' species, as measured relative to the total amount of ''indicator'' species. For this reason, a 5–percent threshold of pelagic and demersal ''indicator'' species will be established for BLL and PLL gear, respectively, on trips fishing in HMS time/area closures. NMFS recognizes that a small percentage of species caught on BLL and PLL gear will be the unavoidable bycatch of pelagic and demersal species, respectively. Also, the logbook data indicate that the 5–percent threshold would have been exceeded on a fishery-wide basis in 2004, whereas both fisheries (PLL and BLL) would have been well below the threshold from 2000 - 2003. If necessary, both the 5–percent threshold and the list of indicator species can be modified in the future based upon a review of current and historic landings and the effectiveness of the regulation.

Presently, the Agency does not expect that the final rule implementing a 5–percent threshold will significantly limit the abilities of either fishery. NMFS further believes that it is not unreasonable, or unduly burdensome, for HMS longline vessels to comply with the intent of the HMS closed areas and avoid pelagic or demersal species, especially when legally fishing in these areas with BLL or PLL gear, respectively. If any portion of an HMS longline trip occurs within a BLL or PLL closed area, then that vessel would be required to adhere to the 5–percent threshold for pelagic or demersal species, respectively. This management measure is readily enforceable, either through dockside verification of landings or by at-sea boardings. If difficulties arise in determining whether a vessel is fishing with PLL or BLL gear in a closed area using the existing definitions, the species composition of catch methodology will provide a quantifiable method to verify fishing technique.

Comment 9: Comments specifically referencing the 5–percent species composition threshold for differentiating between gears include: In order to differentiate between PLL and BLL gear, NMFS should prevent fishermen with BLL gear from landing any pelagic species in preferred alternative I1(c). This prohibition would eliminate the profit incentive and motive for violating closed areas and manipulating set time, depth at which gear is set, and the number of buoys; I am opposed to the 5–percent tolerance for species because there is too much variability in the catch. This ratio could also be problematic when combined with the alternative addressing dealers and vessels buying and selling fish in excess of retention limits, because there is no room for error and no way to dispose of catch that is useful; NMFS must make sure that the species composition lists in preferred alternative I1(c) are complete enough to allow for gear definitions based on species; and, tilefish should be added to the list of demersal indicator species.

Response: NMFS appreciates these comments. As discussed above in the response to Comment 8, both types of gear can occasionally catch both types of ''indicator'' species, pelagic and demersal. The establishment of a zero-tolerance for pelagic ''indicator'' species when fishing in PLL closed areas with BLL gear could create a situation where regulatory discards occur, due to the unavoidable bycatch of pelagic species. The final rule strikes an appropriate balance by establishing a 5–percent tolerance, which should discourage directed fishing on pelagic species by BLL vessels and vice-versa, but not increase regulatory discards. Data from the Coastal and HMS logbooks indicate that, on average, vessels remained below this threshold from 2000 - 2004, although it would have been exceeded in 2004. Based upon public comment, NMFS has modified the list of demersal ''indicator'' species by removing hammerhead and silky sharks, and by adding tilefish to the list. If necessary, both the 5–percent threshold and the list of indicator species could be modified in the future based upon a review of current and historic landings.

Comment 10: More enforcement time should be spent at the docks rather than spending resources on investigating boats at sea. At-sea enforcement of alternative I1(c) could initiate unnecessary de-icing of fish in the hold while at sea, which has a substantial economic impact.

Response: As discussed above in the response to Comment 8, this final rule is readily enforceable, either through dockside verification of landings or by at-sea boardings. If difficulties arise in determining whether a vessel is fishing with PLL or BLL gear in a closed area using the existing definitions, the species composition of catch methodology will provide a quantifiable method to verify fishing technique.

Comment 11: The Gulf of Mexico Fishery Management Council and others have recommended that the preferred alternative be changed from I1(b) to I1(e); Base HMS time/area closures on all longlines (PLL and BLL); alternative I1(e) would be the easiest alternative to enforce. This is the only way to achieve a meaningful reduction in bycatch; billfish feed throughout the water column. To provide the proper protection needed, both types of longline gear should be prohibited from closed areas; alternative I1(e) should also prohibit buoy gear from the closed areas; alternative I1(e) is the only way to reduce bycatch and facilitate enforcement; and, how deep must BLL gear be set before it does not adversely affect pelagic species?

Response: NMFS agrees that the alternative to base all closures on both PLL and BLL gear would be the easiest to enforce. However, this final rule limiting bycatch is expected to be very effective at preserving the conservation benefits associated with the closed areas, while simultaneously mitigating adverse economic impacts on longline vessels fishing in the closed areas. When deployed and fished properly, available logbook information suggests that BLL and PLL gear can be set and retrieved with only minor impacts on pelagic and demersal species, respectively. Closing these areas to all gears, therefore, would impose economic costs while achieving only minimal ecological benefits. NMFS anticipates that HMS longline vessels will continue to catch predominantly pelagic species in BLL closed areas, and demersal species in PLL closed areas. NMFS does not agree that areas closed to PLL or BLL gear also need to be closed to buoy gear. As discussed in the Authorized Fishing Gears section, NMFS is authorizing buoy gear in the commercial swordfish handgear fishery with gear marking requirements and limits on the number that may be deployed. These measures will prevent the uncontrolled future expansion of this gear sector, while simultaneously providing a reasonable opportunity for the U.S. to harvest its ICCAT swordfish quota.

ii. Shark Identification

Comment 12: We support alternative I2(a) which would retain the current regulations regarding shark landing requirements (No Action) because the preferred alternative, I2(b), could have a negative economic impact on the fish houses due to degradation of the product. The sharks could be exposed to heat after unloading and weighing, instead of going directly into the ice vats after weighing. It costs time and money to stop and try to cut off all the secondary fins, particularly small ones after the boat has docked and the fish house has began the unloading efforts.

Response: In an effort to improve data collection, quota monitoring, and stock assessments of shark species, the Agency is implementing measures requiring that the second dorsal and anal fins remain on all sharks through landing. While offloading and processing procedures may have to be adjusted initially, NMFS believes that efforts to improve shark identification and enforcement of regulations will improve the overall status of the shark fishery. These measures are an intermediate action, relative to no-action and requiring all fins on all sharks, in terms of economic impacts, in that the second dorsal and anal fins are typically the least valuable and are usually sold as the lowest quality grade. Either the dealer or the fishermen can remove these fins after landing. If removing the fins at the dock becomes problematic, it is possible that fishermen could pre-cut fins, so that they are only partially attached, to decrease processing time. Alternatively, dealers could remove the fins later when processing the rest of the carcass.

Comment 13: NMFS received the following comments supporting the alternative to require the second dorsal and anal fins on all sharks: I support the preferred alternative; these measures will greatly enhance species-specific shark landing data and improve identification; retention of the second dorsal fin and anal fins of landed sharks, including nurse and lemon sharks, will improve quota monitoring, prohibited species enforcement, and species-specific identification of sharks; and, lemon sharks and great hammerheads have valuable fins- they should be ok to remove after landing.

Response: The final rule is expected to generate ecological benefits by enhancing and improving species identification and data collection, particularly in coordination with the final management measures requiring shark dealer identification workshops, thereby leading to improved management and a sustainable fishery.

Comment 14: Maintaining the second dorsal and anal fins on all sharks will do little to improve shark identification.

Response: The second dorsal and anal fins of sharks vary in color, shape, and size (relative to the body). While retaining these fins may not allow all shark species to be distinguished from each other, NMFS believes that it will aid shark identification at landing, which, in conjunction with species identification workshops, should reduce the number of unclassified sharks being reported. While retaining these fins is expected to enhance identification, other alternatives allowing these fins to remain on nurse and lemon sharks could confuse identification by allowing some sharks to be completely finned, and could have adverse ecological impacts.

iii. HMS Retention Limits

Comment 15: NMFS received the following comment in support of the no action alternative I3(a): Proceeds from fish caught in excess of a vessel's trip limit should be donated to NMFS to help fund the observer program up to a certain limit, such as 5 percent, and fishermen should get fined for anything above that percentage.

Response: For each of the regulated HMS, specific trip limits have been developed based upon a number of biological, social, and/or economic reasons, such as the nature of the trip (commercial or recreational), the gear types used to harvest the fish, or the status of the stock in question. Thus, tolerance limits need to be developed for each individual species on a fishery-by-fishery basis, and may not be appropriate for all regulated species. Also, even with tolerance limits, the likelihood of exceeding these limits would still exist and NMFS would likely continue to receive comments to adjust the limit or tolerance limit. The suggestion to fund the observer program through proceeds from fish landed above the trip limit raises a number of practical and legal concerns. If these concerns can be satisfactorily resolved, NMFS may consider this suggestion in the future, as needed.

Comment 16: Because NMFS is considering measures to strengthen HMS retention limits, does this mean that we are currently allowed to exceed the retention limits?

Response: No. Currently all vessels fishing for, retaining, or possessing Atlantic HMS, with the intent to sell that catch, must abide by the commercial retention limits as stated in §§ 635.23 and 635.24. The current prohibitions located in § 635.71 reinforce the applicability of these commercial limits. The final rule implements new prohibitions making it illegal for any person to purchase or sell any HMS from an individual vessel in excess of the commercial retention limits. As such, dealers or buyers of HMS in excess of commercial retention limits will be held responsible for their actions. These prohibitions are intended to improve compliance with HMS retention limits by extending the regulations to both of the parties involved in a transaction. They will reinforce and clarify other existing regulations regarding landings of HMS in excess of commercial retention limits.

Comment 17: NMFS received comments both in support of and opposition to alternatives I3(b) and I3(c). Those comments in support stated that NMFS needs to make all parties involved in a violation of the fishery regulations accountable, both vessel owners and dealers regardless if they are commercial or recreational. Those comments opposed stated: Alternatives I3(b) and I3(c) eliminate flexibility when it comes to shark landings. As scales are not used on small boats, vessel owner/operators can only estimate a trip limit at sea based upon a carcass count and an estimated average weight; and, concerns exist regarding the 5–percent shark fin/body ratio. The ratio is not correct as it was based on one species. Thus, we need to have species-specific ratios for these alternatives to be fair.

Response: The final rule is intended to improve compliance with HMS retention limits by extending the regulations to both of the parties involved in a transaction where HMS exceeding trip limits are sold or purchased. It will also reinforce and clarify other existing regulations regarding landings of HMS in excess of commercial retention limits. As with any limitation on catch, vessel owner/operators must use their experience and professional judgment in determining where their harvest stands in regard to catch/possession/trip limits to ensure that they do not exceed the limits. Regarding the 5–percent tolerance limit on shark fins, this limit is currently dictated by the Shark Finning Prohibition Act. NMFS cannot alter this limit.

Comment 18: In addition to the selected alternatives, NMFS should enforce the existing prohibition on the sale of recreationally caught HMS. NMFS should levy heavy fines and permanent permit sanctions on the fishermen, vessel owner, and buyer if any bag limit fish are sold, traded, or bartered. NMFS should implement additional restrictive provisions in the Final Consolidated HMS FMP to prevent the illegal sale of recreational catches.

Response: The current suite of regulations and prohibitions contained in 50 CFR part 635 address the illegal sale, trade, and bartering of recreationally landed HMS. As the range of violations regarding these types of activities can vary greatly, the current penalty schedule provides enforcement agents and prosecutors with the flexibility to determine a suitable fine, based on information pertaining to each specific infraction.

iv. Definition of ''East Florida Coast Closed Area''

Comment 19: NMFS received contrasting comments on preferred alternative I4(b), which would modify the outer boundary of the East Florida Coast Closed Area so that it corresponds with the EEZ. These comments include: I support alternative I4(b), which amends the coordinates of the Florida East Coast closure; and, I am opposed to expanding any of the existing closed areas, including the East Florida Coast closed area described in preferred alternative I4(b). The PLL fleet needs every inch of available fishing grounds.

Response: NMFS does not expect a reduction in HMS catches associated with the final rule because the geographic size increase is very small (0.5 nm) and, according to the PLL logbook data, there have not been any recent catches or PLL sets in this area. Fishing effort that would have occurred in this area will likely relocate to nearby open areas with similar catch rates. Therefore, overall fishing effort is not expected to change as a result of the final rule. NMFS is correcting the

coordinates to reflect the original intent of the East Florida Coast closed area to extend to the outer boundary of the EEZ.

v. Definition of ''Handline''

Comment 20: I support preferred alternative I5(b), which requires that handlines be tied to the boat. If it is tied to the boat it is a handline, if it is not, it is a longline.

Response: NMFS is implementing the referenced alternative which will require that all handlines remain attached to, or in contact with, a vessel. However, by authorizing buoy gear in the commercial swordfish handgear fishery (see Authorized Fishing Gears), unattached lines will not, by default, automatically be considered longline gear. Buoy gear will be authorized only in the commercial swordfish handgear fishery with gear marking requirements, hook limitations, and limits on the number that may be deployed. Both handlines and buoy gear will still be limited to no more than two hooks per line.

Comment 21: We support alternative I5(c), which would require fishermen to attach their handlines to their vessels, because handlines should remain as recreational gear (attached to the vessel) and buoy gear should be designated as commercial gear. However, there are times when fishermen need to detach their handlines, particularly when a large captured fish has spooled several reels, in order to retrieve the gear. Is that now going to be prohibited?

Response: Buoy gear will be authorized only for the commercial swordfish fishery. However, handlines are, and will continue to be, authorized in both commercial and recreational fisheries. The final rule requires that handlines remain attached to a vessel. It does not change which fisheries the gear is authorized for. The situation where a large fish spools several reels and must be ''tethered-off'' to retrieve the gear and/or the fish is an uncommon, but not rare, occurrence. The important factor in determining if this is an allowable practice is whether or not the handline was attached to the vessel when the fish was first hooked. Primarily to facilitate safety at sea, the handline could be ''tethered-off'' if it was attached to the vessel when the fish was hooked. NMFS anticipates that these situations will need to be examined on a case-by-case basis, in consideration of the circumstances affecting the decision to detach the handline.

Comment 22: How is the definition of ''handline gear'' different from the ''buoy gear'' definition?

Response: In the final rule, the main difference between the two gears is whether or not the gear is attached to a vessel. If the gear is attached, it would be considered handline and could be used, with the appropriate permits, in any of the tunas, swordfish, or shark fisheries. If the gear is not attached, it will be considered buoy gear and can only be used in the commercial swordfish handgear fishery. Specifically, handlines are defined as fishing gear that is attached to, or in contact with a vessel; that consists of a mainline to which no more than two hooks or gangions may be attached; and that is released and retrieved by hand rather than by mechanical means. Buoy gear is authorized for the commercial handgear fishery, and consists of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached. Buoy gear is required to be constructed and deployed so that the hooks are attached to the vertical portion of the mainline. Flotation devices may be attached to one, but not both ends of the mainline, and no hooks or gangions may be attached to any horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion is allowed to be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. All buoy gears are required to be released and retrieved by hand. Fishermen using buoy gear will also be required to affix monitoring equipment to each individual buoy gear. Gear monitoring equipment may include, but is not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is used, the vessel deploying the buoy gear is required to possess an operable spotlight capable of illuminating deployed flotation devices. Additionally, a floatation device is defined as any positively buoyant object rigged to be attached to a fishing gear.

Comment 23: Are floating handlines being used to catch juvenile swordfish in the East Florida Coast closed area?

Response: Available HMS logbook data from 2000 to 2004 indicate that the ''handline-only'' fishery grew significantly in 2004, and that catches and discards of swordfish in the ''handline-only'' fishery increased as well. However, the HMS logbook does not differentiate between ''attached'' and ''unattached'' handlines, and recreational data are limited. Given these limitations, it is not possible to determine conclusively if floating handlines are being used to catch juvenile swordfish in the East Florida Coast closed area. However, given that the legal minimum size is below the size of maturity, the average size of swordfish caught across all fisheries is below the size of maturity. Because the area off the east coast of Florida is a known nursery ground for swordfish, it is likely that any fishing gear, including rod and reel or handline, used to catch swordfish off the east coast of Florida catches juvenile swordfish.

vi. Possession of Billfish on Vessels Issued HMS Commercial Permits

Comment 24: What types of permits would be affected by preferred alternative I6(b), which prohibits vessels issued commercial permits and operating outside of a tournament from possessing or taking Atlantic billfish?

Response: Under the final rule, only persons issued an HMS Angling or HMS Charter/Headboat, or who have been issued an Atlantic Tunas General Category permit and are participating in a registered HMS tournament, are allowed to possess or take an Atlantic billfish. Persons issued only Federal swordfish, shark, or Atlantic Tunas permits (including General Category permits outside of registered HMS tournaments) are not allowed to possess or take an Atlantic billfish. Persons issued both commercial and recreational HMS permits can take billfish, but only if the HMS species possessed onboard the vessel do not exceed the HMS recreational retention limits.

Comment 25: NMFS needs to make sure that the language in preferred alternative I6(b) is very clear in specifying that a commercial permit refers to HMS commercial fisheries.

Response: The regulations clarify that only persons issued an HMS Angling or HMS Charter/Headboat, or who have been issued an Atlantic Tunas General Category permit and are participating in a registered HMS tournament, may possess or take an Atlantic billfish. Persons issued non-HMS commercial permits may possess or take Atlantic billfish only if they have also been issued the appropriate HMS permits.

Comment 26: NMFS received several comments in support of, or in opposition to, the preferred alternative I6(b) including: I support preferred alternative I6(b) until Atlantic billfish stocks are rebuilt; we support prohibiting commercial vessels from possessing, retaining, or taking Atlantic billfish (alternative I6(b)); I support preferred alternative I6(b), because it would help to eliminate gillnet fisheries that kill billfish and other non-target species; I am opposed to preferred alternative I6(b) because all commercial vessels should be able to retain recreational bag limits; and, the preferred alternative I6(b) would have

more negative impacts than NMFS has listed presently in the DEIS.

Response: The final rule clarifies that commercial HMS vessels cannot possess or take Atlantic billfish. The regulations also clarify that the current Atlantic billfish fishery is a recreational fishery and that Atlantic billfish may only be possessed or retained when taken recreationally by rod and reel. These measures do not eliminate any existing fisheries, but indicate that commercial fishermen onboard gillnet or bottom longline vessels cannot retain a billfish taken with rod and reel for personal use, unless the vessel possesses both the recreational and commercial permits (e.g., a commercial shark limited access permit and an HMS Charter/Headboat permit) and if the other HMS onboard did not exceed the HMS recreational retention limits. Furthermore, General Category fishermen fishing for Atlantic tunas with rod and reel may not possess billfish outside of registered HMS tournaments. To the extent that some fishermen with commercial HMS permits may take billfish, there could be minimal impacts on commercial fishermen taking billfish for personal use. Current regulations do not allow commercial HMS fishermen to take recreational limits of HMS. NMFS believes that few commercial HMS fishermen take billfish, this alternative clarifies the regulations, and reinforces the recreational nature of the Atlantic billfish fishery. Once Atlantic billfish are rebuilt, NMFS may consider alternatives to allow persons issued HMS commercial permits to possess a limited number of Atlantic billfish for personal use.

vii. Bluefin Tuna Dealer Reporting

Comment 27: I support preferred alternative I7(b), which would allow tuna dealers to submit their required reports using the Internet; NMFS should move towards alternative I7(c), which would require mandatory internet reporting, as soon as possible.

Response: Due to the importance NMFS places on reporting, the Agency wants to ensure that reporting is both convenient and fair for all user groups. Mandatory Internet reporting will not be implemented until NMFS is confident that such an action will not impede the reporting process.

viii. ''No-Fishing'', ''Cost-Earnings'', and ''Annual Expenditures'' Reporting Forms

Comment 28: I support preferred alternative I8(b), which requires the submission of ''no-fishing'' forms. Is there latitude with logbooks coming in from different countries? If you do not have all the parts of the logbook submission, should you send in what you have or wait until you have everything? For instance, I often do not have the offload tally by the time the logbook is due (seven days after offloading).

Response: As specified in the Atlantic HMS regulations 50 CFR 635.5, owners of vessels issued an HMS permit must submit a fishing record that reports the vessel's fishing effort, and the number of fish landed and discarded. This information should be entered in the logbook within 48 hours of completing that day's activities on a multi-day trip, or before offloading on a single day trip. Additionally, if HMS are sold, the vessel owner must acquire copies of the weigh out slips for submittal with the logbook forms. All forms must be postmarked within seven days of offloading HMS, regardless of offloading location. The final rule does not change these requirements.

ix. Non-Tournament Recreational Landings Reporting

Comment 29: Vessel owners should not have to report their recreationally-caught fish because they are often too busy (e.g., absentee boat owners that fly into Florida from New York City for the weekend).

Response: Because vessel owners are issued HMS permits, the recreational non-tournament reporting requirement should logically, and for compliance purposes, be the responsibility of vessel owners. Furthermore, since vessel owners are the permit holders, they are more likely to be familiar with the regulations governing their fishery than non-permitted anglers who might be onboard, possibly for just a day on a charter trip. The final rule will achieve better consistency with other HMS recreational reporting requirements, and may also enhance the accuracy of, and compliance with, non-tournament HMS recreational data collection. However, in response to this comment and other comments, NMFS has slightly modified the proposed regulations to allow an owner's designee to report non-tournament recreational landings of Atlantic billfish and swordfish. The vessel owner will still be held responsible for reporting, but the owner's designee may fulfill the requirement.

x. Pelagic Longline 25 mt NED Incidental BFT Allocation

Comment 30: NMFS should clarify whether ''carryover'' provisions would apply to the underharvest of the 25 mt NED BFT quota set-aside described in alternative I10(b).

Response: The alternative that was formerly preferred in the Draft Consolidated HMS FMP would have clarified that carryover procedures apply to the NED set-aside, and that any under/overharvest of the 25 mt (ww) NED set-aside would be carried forward into, or deducted from, the subsequent fishing year's set-aside allocation. This alternative was originally preferred in the Draft Consolidated HMS FMP, but after subsequent analysis of the recommendation and in response to comments seeking clarification, the Agency has determined that the ICCAT recommendation provides the flexibility to avoid some of the potential negative consequences associated with the carryover provisions of alternative I10(b). Alternative I10(c) is now the preferred alternative.

Comment 31: NMFS received a comment in support of alternative I10(b), which would allocate 25 mt (ww) for PLL incidental catch in the NED each year.

Response: This alternative was originally preferred in the Draft Consolidated HMS FMP, because NMFS believed that its interpretation would provide consistency between the regulations and operational practices regarding rollovers and final set-aside quotas in excess of 25 mt (ww). However, since publication of the Draft Consolidated HMS FMP, additional analysis of the ICCAT recommendation indicated that the previously preferred alternative, I10(b), might have some potential negative consequences that could be avoided. Thus, under alternative I10(b), incidental BFT landings from the NED Statistical area would be accounted for in this specific set-aside quota and any under/overharvest of the set-aside quota would have been added to, or deducted from, the following year's baseline quota allocation of 25 mt (ww). The under/overharvest accounting procedures contained in this alternative may have some potentially adverse ecological impacts. Specifically, if the NED set-aside was not attained in multiple successive years, the set-aside quota could increase quite dramatically and, as the wording in the ICCAT recommendation specifically allocates this quota to the longline sector of the U.S. fleet, NMFS would not have the flexibility to transfer this quota to the Reserve or to another domestic user group, to avoid a ''stockpiling'' situation from occurring. An unrestrained build-up of the incidental NED set-aside BFT quota may eventually undermine the intent of the set-aside itself by leading to additional effort being deployed in the NED, and potentially providing an

incentive to direct additional effort on BFT. For example, this set-aside could increase to a level that makes it more attractive for PLL vessels to target BFT, which could possibly result in negative impacts to BFT stocks. Therefore, this alternative is no longer preferred and, instead, alternative I10(c) is preferred. Alternative I10(c) will not carry forward any under/overharvest, until such time as further ICCAT discussions regarding quota rollovers are conducted.

xi. Permit Condition for Recreational Trips

Comment 32: NMFS received comments in support of preferred alternative I11(b) including: We support preferred alternative I11(b) because it will enhance Atlantic shark conservation efforts while ASMFC develops an interstate FMP; and, I support the presumption that an HMS onboard a vessel was caught in Federal waters, because the current regulations cause enforcement problems.

Response: NMFS agrees that this final rule will enhance HMS conservation efforts and will improve the enforcement of HMS regulations. Currently, in many states, fishermen are able to bypass both Federal and state regulations by stating they were fishing in state waters, rather than Federal waters, or vice versa. Under this rule, recreational fishermen fishing in Federal waters, who have a Federal permit, must comply with the more restrictive regulation if they are obtaining a Federal permit. Recreational fishermen who do not have a Federal permit will continue to have to comply with only state regulations. Thus, as a result of this final rule, enforcement officers will no longer need a statement from a fisherman with a Federal permit regarding where the fish was caught. Rather, they will be able to take enforcement action under the more restrictive regulations. This requirement has been in place for a number of years for shark and swordfish commercial fishermen and has been useful in enforcing commercial regulations.

Comment 33: Will NMFS consider the full suite of regulations implemented by states with regard to HMS or will it simply look at each regulation individually? How does NMFS intend to define ''strict?''

Response: Each situation will need to be examined on a case-by-case basis; however, it is likely that the regulations will be enforced individually rather than as a suite. For instance, if a state has a larger bag limit and larger minimum size than the Federal regulations, the fishermen will be limited by both the Federal bag limit and the state minimum size.

Comment 34: NMFS could say that all HMS vessels with Federal permits (instead of just recreational-permitted vessels) should comply with Federal regulations when in Federal or state waters.

Response: NMFS already has a requirement in place for commercial shark and swordfish fishermen. NMFS also has the authority, under the Atlantic Tunas Convention Act (ATCA), to manage Atlantic tunas all the way to shore for most states. This final rule will improve the enforcement of the remaining fisheries (recreational shark, swordfish, and billfish) without superseding the regulations of the states. Thus, the final rule will allow states to establish their own regulations for shark, swordfish, and billfish fishermen who are fishing only within state waters (Maine and Connecticut can also establish their own regulations for Atlantic tunas). NMFS has the authority to pre-empt states regarding HMS under both the Magnuson-Stevens Act and ATCA. However, NMFS prefers to work with states and the Atlantic and Gulf States Marine Fisheries Commissions towards consistent regulations that meet both international and domestic goals, because each state is different and the fishermen in each state prefer to fish for different HMS and use different gears. If necessary to ensure rebuilding under the HMS FMP or under an ICCAT Rebuilding Program, NMFS may consider pre-empting state authority for specific HMS.

Comment 35: The South Atlantic Fishery Management Council (SAFMC) and the State of Georgia commented that the preferred alternative I11(b) should be revised as for state/federal regulations does not implement the correct intent as: For allowable Atlantic billfish (and other HMS that can legally be included), if a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in the HMS FMP, a person landing in such state Atlantic Billfish (and other HMS to be included) taken from the U.S. EEZ must comply with more restrictive state regulation. The requirement should be a two-way street where more restrictive state regulations should apply in adjacent federal waters.

Response: Individual states establish regulations for billfish or other HMS caught in state waters, which may sometimes be more restrictive than the federal regulations. This final action would not change state regulations of fishing in state waters. Federal regulations are established based on ICCAT recommendations (e.g., the billfish size limits), implemented as necessary and appropriate pursuant to ATCA and based on the Magnuson-Stevens Act. Selected alternative I11(b) is intended to ensure compliance with these laws and Federal regulations by federally-permitted vessels.

Comment 36: HMS needs to check with the Regional Fishery Management Councils to make sure they are not running afoul of one another. The preferred alternative I11(b) could create more confusion if there is not a consistent policy for all Federal fishery regulations.

Response: While NMFS agrees that consistent policies across fisheries regulations are often appropriate, NMFS disagrees that a regulatory requirement would cause confusion if it were not consistent across the different Regional Fishery Management Councils. Currently, recreational fishermen fishing for HMS are the only Federally regulated recreational fishermen that are required to obtain a recreational fishing permit. Recreational fishermen fishing for HMS in Federal waters are already familiar with and abide by Federal regulations for HMS. Similar to other regulations, a permit condition that is appropriate for HMS may not be appropriate for a species managed by a Regional Fishery Management Council. A Federal permit condition for those HMS fishermen who also fish for HMS in state waters should not cause confusion with other Federal regulations for other species managed by Regional Fishery Management Councils. Nevertheless, NMFS will continue to work with the affected Regional Fishery Management Councils to ensure consistency, as needed.

Comment 37: Texas Parks and Wildlife opposes the preferred alternative I11(b), which would establish a permit condition on recreational permit holders. The alternative would increase confusion because it applies only to HMS and not to the many other species in state waters. Second, Texas regulations require that recreational landings in Texas meet Texas bag and size limits regardless of where the fish was caught unless the regulations in the waters where they were caught are more restrictive. Third, the preferred alternative applies only to Federal permit holders and would therefore create a scenario where different regulations apply in the same location. Lastly, the alternative does not simplify already confusing and complex regulations.

Response: NMFS does not agree that a recreational permit condition will increase confusion. This regulation will

decrease confusion by clarifying that fishermen who are permitted to fish for HMS in Federal waters must comply with Federal regulations regardless of where they are fishing, and that if they are fishing in state waters they must comply with the more restrictive regulation. Without this regulation, fishermen may need to comply with one regulation while fishing in Federal waters and another regulation while fishing in state waters. The final rule clarifies the situation if fishermen are fishing in both state and Federal waters on the same trip. With regard to the second point, the State of Texas has implemented a regulation for its waters that mirrors the regulation that NMFS is selecting. The Federal requirements will not change this and may complement the regulation by ensuring that federally permitted fishermen do not exceed either the Federal or Texas bag and size limits when fishing in or near Texas waters. NMFS agrees that different regulations could apply to federally permitted fisherman fishing in state waters next to a state-only permitted fisherman. This should not be an issue since the more restrictive regulation would apply. It may appear to be unfair to the federally permitted fisherman if the Federal regulations for that species are more restrictive than the state regulations for that species. However, the federally permitted fisherman also has the opportunity to fish for HMS outside of state waters. If the federally permitted fisherman decides that the opportunity is not worth the additional restrictions, then that fisherman could decide not to obtain the permit. The final rule will not change the regulations for state-only permitted fishermen, who are restricted to fishing within state waters and must comply with state, not Federal, regulations.

Comment 38: While the South Carolina Department of Natural Resources understands the importance of consistent protection for HMS in state and Federal waters, we do not believe it was the intent of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to regulate fisheries in state waters except under unusual circumstances. We request that preferred alternative I11(b) be deleted from the plan, and that HMS caught within state waters be regulated through complementary state legislation and regulations, or through provisions already existing in the Act that address special cases.

Response: NMFS does not agree that the requirement is regulating fisheries in state waters. The Magnuson-Stevens Act authorizes the Secretary of Commerce to manage HMS fisheries to ensure their conservation and the achievement of optimum yield throughout their range, both within and beyond the exclusive economic zone (16 U.S.C. 1812). Requiring recreational fishermen to comply with Federal regulations regardless of where they are fishing, unless a state has more restrictive regulations, allows NMFS to manage these fisheries in a more effective manner. Additionally, the requirement will only apply to those fishermen that obtain a Federal permit because they fish in Federal waters at some times. The requirement will not change state regulations. Thus, states can establish their own regulations for fishermen who fish in state waters and not in Federal waters. Fishermen still have a choice not to obtain a Federal permit and to comply only with state regulations in state waters.

xii. Proposed Regulatory Changes that Do Not Need Alternatives

Comment 39: We support the regulatory changes that do not have alternatives.

Response: NMFS appreciates this comment. The regulatory changes that did not need alternatives included corrections, clarifications, minor changes in definitions, and modifications to remove obsolete cross-references. It is necessary to make these types of regulatory changes as dates expire, and as minor issues are brought to the Agency's attention.

Comment 40: NMFS received a comment regarding the changes to clarify the definition of ''shark'' and the shark ''management unit'': I am concerned about any item that lessens conservation on deepwater sharks; and, deepwater sharks should be added to the prohibited list rather than removed from the management unit.

Response: The minor changes to the shark definition and management unit will not diminish the conservation of deepwater sharks. Deepwater sharks were previously placed in the management unit in order to prevent finning for these species. No other regulations (e.g., permits, quotas, or bag limits) were placed on these species. With the implementation of the Shark Finning Prohibition Act in 2002 (February 11, 2002, 67 FR 6194), NMFS decided the species were fully protected against finning through regulations outside of the FMP, and thus, removed the species from the management unit in Amendment 1 to the 1999 Atlantic Tunas, Swordfish, and Shark FMP (December 24, 2003, 68 FR 74746). The referenced changes clarify the existing regulations by linking the definition of ''shark'' more directly to the definition of the shark ''management unit.'' NMFS will continue to collect information on deepwater sharks and may add them to the management unit or implement additional management measures in the future, as needed.

Comment 41: The proposed changes to the HMS tournament registration process appear to complement proposed improvements to HMS tournament registration, data collection, and enforcement described in Alternative E9. Data collection should be mandatory for all tournaments, just as it has been for all non-tournament landings since 2003. There must be more accurate estimates of billfish mortality.

Response: These regulatory changes, which specify that HMS tournament registration is not considered complete unless the tournament operator receives a confirmation number from the HMS Management Division, will serve a very similar purpose to the non-preferred alternative, which would have implemented a mandatory HMS tournament permit. HMS tournament registration is already mandatory, so the issuance of a confirmation number will provide verification that the process is complete in a much less burdensome manner. Currently, NMFS can select all registered HMS tournaments for mandatory reporting. Data obtained from HMS tournament reporting is used for a variety of purposes.

Essential Fish Habitat (EFH)

Comment 1: NMFS should look at recent Sargassum research that suggests that Sargassum is essential fish habitat for juvenile billfish. The United States should pursue all appropriate opportunities to ensure that this unique EFH is protected in international waters from excessive harvest and degradation.

Response: NMFS is aware of recent research regarding the role of Sargassum as EFH for certain species, including HMS. However, NMFS does not have the authority to identify and describe EFH in international waters. Furthermore, NMFS is not modifying the current descriptions or boundaries of EFH in the Consolidated HMS FMP. Rather, NMFS gathered all new and relevant information and presented it in the Draft FMP to determine whether changes to EFH may be warranted. If NMFS determines that EFH for some or all HMS needs to be modified, then that would be addressed in a subsequent rulemaking, at which point Sargassum could also be considered as potential EFH. With regard to harvest, the final South Atlantic Fishery Management Council FMP for Pelagic Sargassum Habitat in the South Atlantic Region was approved in 2003 and implemented

strict restrictions on commercial harvest of Sargassum. The approved plan includes strong limitations on future commercial harvest. Restrictions include prohibition of harvest south of the boundary between North Carolina and South Carolina, a total allowable catch (TAC) of 5,000 pounds wet weight per year, limiting harvest to November through June to protect turtles, requiring observers onboard any vessel harvesting Sargassum, prohibiting harvest within 100 miles of shore, and gear specifications.

Comment 2: The U.S. proposal at ICCAT to identify Sargassum as EFH was met with absolute resistance. NMFS has to be careful in dealing with this subject in an international forum. It can undermine what NMFS is trying to do.

Response: NMFS is aware that there are many issues to consider with regard to identifying and describing Sargassum as EFH for HMS species. In addition, there are potential international concerns, as expressed at ICCAT, regarding Sargassum as sensitive and valuable habitat. NMFS will continue to examine these issues carefully, and work to improve our understanding of the role of Sargassum as valuable habitat for HMS.

Comment 3: Does NMFS have data to justify not designating the entire northern Gulf of Mexico as EFH, where the paper in the journal ''Nature'' shows the presence of adult BFT from January to June?

Response: As described in response to comment 1, NMFS is not currently changing any of the EFH areas identified for HMS, including EFH for BFT through this FMP. However, large portions of the Gulf of Mexico are already identified as EFH under the original EFH descriptions in the 1999 FMP for several life stages of BFT, including adult and larval BFT.

Comment 4: The HMS regulations should acknowledge and comply with Gulf of Mexico EEZ EFH and Habitat Areas of Particular Concern (HAPC) designation and regulations, including any future designations that the Gulf of Mexico Fishery Management Council may make when conducting the subsequent rulemaking mentioned in the Draft Consolidated HMS FMP.

Response: NMFS agrees that any future modifications to EFH or new HAPC areas in the Gulf of Mexico, or any region for that matter, should be coordinated with appropriate Regional Fishery Management Council designations and regulations. The EFH guidelines require NMFS to consider fishing and non-fishing impacts of other fisheries on HMS EFH, as well as the impact of HMS fishing activities on EFH for other federally managed species.

Comment 5: What process did NMFS use to identify shark EFH areas north of Cape Hatteras? EFH boundaries appear to follow bathymetric contour intervals. Is this deliberate or just a coincidence?

Response: EFH areas north of Cape Hatteras were identified and described in the 1999 FMP through a combination of fishery dependent and independent surveys and data collection, research, and the input of fishery managers and scientists. References to peer-reviewed scientific publications that were used to help identify important spawning and nursery habitat for sandbar and dusky shark are included in the 1999 FMP as well as the Consolidated HMS FMP. As described in the 1999 FMP, in some cases bathymetric contours were used to help delineate EFH boundaries because they can mirror the observed distributions of HMS and important areas for spawning, feeding, and growth to maturity.

Comment 6: NMFS should not use the same process the Gulf of Mexico Fishery Management Council did in identifying EFH and impacts to EFH. The Gulf of Mexico Fishery Management Council managed areas are completely different, and people fish differently here (in the Atlantic) than in the Gulf of Mexico.

Response: The species managed by each of the Regional Fishery Management Councils are unique, with characteristics that require different approaches and methodologies for identification and description of EFH, including addressing both fishing and non-fishing impacts. Similarly, HMS have unique habitat requirements that require a unique approach to identification of EFH. However, EFH guidelines require NMFS to consider fishing and non-fishing impacts of other fisheries on HMS EFH, as well as the impact of HMS fishing activities on EFH for other federally managed species. Therefore, NMFS must coordinate with the relevant regional fishery management councils as part of the process of modifying EFH.

Comment 7: Does HMS EFH include liquefied natural gas (LNG) facilities?

Response: NMFS has not specifically identified the structures associated with LNG facilities as EFH, however, these structures may be located within waters that have been identified as HMS EFH. For example, there are energy production facilities off the coast of Louisiana and Texas that may fall within EFH identified and described for BFT, yellowfin tuna, swordfish, and other HMS species.

Comment 8: NMFS received several comments regarding BFT EFH in the Gulf of Mexico including, NMFS must identify the Gulf of Mexico spawning area as EFH for BFT and consider appropriate measures to minimize the impact of fishing on this EFH, and if NMFS identifies the Gulf of Mexico BFT EFH, then NMFS should include the rest of the Atlantic and the Mediterranean also.

Response: Portions of the Gulf of Mexico, Florida east coast, and the Atlantic were identified and described as adult and larval BFT EFH in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, and the areas remain in effect to this day. NMFS is reviewing new and existing information, including data on potential BFT spawning areas, and will take that information into account if any modifications to EFH areas are proposed in a future rulemaking. NMFS does not have the authority to identify and describe EFH outside of the U.S. EEZ.

Comment 9: NMFS is to be commended for substantial progress in development of the HMS EFH Plan. NMFS has come a long way in identifying EFH and should be congratulated on the work completed in the EFH review and the review of fishing impacts. However, there is still a disconnect between the available data, especially with sharks, and what is in the Draft Consolidated HMS FMP. NMFS should do a better job of including data from research institutions and grants. NMFS should include individual researcher's names that have contributed toward identifying EFH.

Response: NMFS appreciates the favorable comment, while acknowledging that there is considerable work left to do to accurately identify and describe EFH for HMS. As described in the Final Consolidated FMP, significant hurdles must be overcome and NMFS is attempting to address these. For example, NMFS is continually working with NMFS scientists and other experts to update relevant data regarding HMS EFH as it becomes available. NMFS will also include the names of researchers responsible for collecting the data. Where possible and appropriate, NMFS has already included the names of individual researchers in the text, maps, and tables.

Comment 10: NMFS needs to update EFH for sandbar sharks, all age groups, by including a nursery area in the western Gulf of Mexico off the Texas coast, which is a straddling stock with Mexico. It gets into the straddling stock issue instead of the closed stock scenario. NMFS needs to recognize the reality of the straddling stock. This area

is referred to in Stewart Springer's ''The Natural History of the Sandbar Shark.''

Response: NMFS is aware of research done by Springer (1960) who proposed the existence of two breeding populations of sandbar sharks, one off the mid-Atlantic coast, and one in the Gulf of Mexico. One of the research recommendations of the 2005 LCS Stock Assessment was to identify nursery areas of sandbar sharks in the northern Gulf of Mexico, and NMFS will consider this information in any subsequent updates or modifications to sandbar shark EFH. Although the Springer research showed a few neonates (newborns) in the Gulf of Mexico, there may not have been enough to consider this area a primary nursery habitat like the mid-Atlantic.

Comment 11: NMFS has identified HAPCs off of North Carolina and other areas further north. Since NMFS has implemented a closure off North Carolina, NMFS should also bring Virginia into compliance to discourage shark fishing during pupping periods.

Response: NMFS agrees, and has asked Virginia to implement state regulations that complement the Federal regulations. Recently Virginia implemented a 4,000 lb trip limit consistent with the Federal regulations. NMFS is continuing to work, through ASMFC and the development of a coastwide state fishery management plan, with Virginia and other states to implement similar regulations as the Federal fishery.

Comment 12: NMFS should consider differences between monofilament and cable bottom longline when it comes to gear and impacts to coral reefs and sponges. Bottom longline gear would not damage mud bottoms.

Response: NMFS agrees that the type of gear used to fish in sensitive habitat areas may affect the overall impacts. NMFS will also be looking at overall fishing effort in sensitive coral reef areas to determine whether fishing impacts are more than minimal and not temporary. If NMFS finds that the adverse fishing effects on EFH are more than minimal and not temporary in nature, then NMFS will have to consider alternatives to reduce fishing impacts.

Comment 13: Most HMS gears such as pelagic longline would not affect HMS EFH.

Response: NMFS agrees that gears used to fish for HMS, with the possible exception of bottom longline gear, would have little or no impact on HMS EFH.

Comment 14: NMFS should look at sink gillnets and possible impacts on EFH. Fishermen may not want to fish on live bottom and reefs, but they do hit them as evidenced by the catch, which includes various reef species that they catch incidentally. These may include HMS forage species as well. NFMS should investigate the possible impacts of sink gillnet gear on offshore hard bottoms and reefs. This gear is being deployed on sensitive sponge-coral areas.

Response: The full extent of sink gillnet impacts on benthic habitat is not known at this time. NMFS agrees that the primary adverse impact of sink gillnets to sensitive habitat would be to areas containing coral reefs or soft sponges. Sink gillnets set on sandy or mud bottom would be less likely to have an adverse effect, as there would be little vertical structure that could be damaged. NMFS will continue to gather information to assess whether sink gillnets are having adverse effects on EFH and whether actions to minimize adverse impacts should be taken in a future rulemaking.

Comment 15: Will NMFS be documenting where the prey species are found?

Response: Similar to what was done in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, NMFS will document areas that are important to HMS for spawning, feeding, breeding, and growth to maturity. This will require identification of prey species and the degree to which they overlap both temporally and spatially with HMS in a given area.

Comment 16: NMFS should consider EFH designation for forage species for BFT in the Gulf of Maine. By removing prey species such as herring, mid water trawling has been destroying BFT in the Northeast. Fish are moving to Canada, and Canada would be happy to take our fish. Mid-water trawling is banned in Canadian waters, and they have a booming BFT fishery right now. We have seen in the past that the BFT will modify their migrations, and we would not want to see that happen now. We are disappointed to see that this has not been addressed at all in the FMP. The New England Fishery Management Council is taking Amendment 7 under consideration, and we would like to see an emergency rule take place to ban mid-water trawling gear.

Response: In the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, NMFS identified and described large portions of the Gulf of Maine as EFH for adult BFT, and smaller portions of the Gulf as EFH for juvenile BFT. As set forth in the EFH guidelines, loss of prey species may be an adverse effect on EFH and managed species because the presence of prey makes waters and substrate function as feeding habitat. Therefore, actions that reduce the availability of a major prey species, either through direct harm or capture, or through adverse impacts to the prey species' habitat that are known to reduce the population of the prey species, may be considered adverse effects on EFH if such actions reduce the quality of EFH. However, as described in the FMP, BFT are opportunistic feeders that prey on a variety of schooling fish, cephalopods, benthic invertebrates, including silver hake, Atlantic mackerel, Atlantic herring, krill, sandlance, and squid. Thus, NMFS needs to determine the extent to which herring or other prey species contribute to BFT EFH, and whether the removal of a portion of herring in the Gulf of Maine constitutes a negative effect on BFT EFH prior to taking any action. The EFH areas identified and described as EFH for adult BFT in the Gulf of Maine may overlap with a number of different prey species in the area in addition to Atlantic herring. These types of analyses would be part of a follow up rulemaking in which any changes to EFH boundaries, as well as any measures to minimize adverse effects, would be proposed. NMFS will continue to examine the importance of forage species on BFT and other HMS EFH.

Comment 17: NMFS should implement similar measures for herring as those taken by the New England Fishery Management Council. Even though herring are not a HMS species, HMS are part of sustainable fisheries, and NMFS has an interest at stake. HMS should speak up when NMFS is considering what to do with the herring plan.

Response: The New England Fishery Management Council has proposed several measures for the Atlantic herring fishery in the Gulf of Maine, including limited access permits, a mid-water trawl restricted area, area specific total allowable catches, and vessel monitoring systems, among others. NMFS is following the development of the FMP and will provide comments on the plan as appropriate.

Comment 18: EFH designations are intended to address the physical habitat and not forage species. EFH is not an appropriate forum to address forage issues. For example, herring fishermen could say that they cannot catch herring because the BFT are eating them all. The timing and location of harvest is a management issue, not a habitat issue. This is a question about access.

Response: The EFH guidelines state that FMPs should list the major prey species for the species in the fishery

management unit and discuss the location of prey species habitat, and that loss of prey may be considered an adverse effect on EFH. Thus, NMFS considers it appropriate to examine the presence of Atlantic herring and their role as a forage species for BFT.

Comment 19: NMFS should not draw too many conclusions on less than complete data. HMS species are ocean-wide. NMFS needs to get the international forum involved. They have used very progressive research techniques. Predator-prey relationships are important to every species.

Response: NMFS has been cautious in the interpretation of data based largely on presence or absence (level 1). While there is a great deal of ongoing research to identify and describe EFH, in many instances the research is localized or regional in nature, whereas HMS exhibit trans-regional movement and migrations. This makes identifying and describing EFH for HMS particularly challenging. For example, even though researchers may identify an area in the Gulf of Mexico as EFH for a particular species, those habitat characteristics may not necessarily constitute EFH for the same species in other regions. Furthermore, NMFS can only identify and describe EFH within the U.S. EEZ, pursuant to the Magnuson-Stevens Act.

Comment 20: The definition of EFH for Atlantic HMS should be modified to include the geographic range of the species and to add the availability of forage for HMS in critical areas, in time and space.

Response: The EFH guidelines require EFH to be distinguished from the geographic range of the species. The principle of the EFH provisions in the Magnuson-Stevens Act was to identify only those areas that are essential for feeding, breeding, or growth to maturity, and not all areas where a particular species is present. For example, if only level 1 information is available, distribution data should be evaluated to identify EFH as those habitat areas most commonly used by the species. Level 2 through 4 information, if available, should be used to identify EFH as the habitats supporting the highest relative abundance, growth, reproduction, or survival rates within the geographic range of a species. The geographic range for HMS is extremely large and would likely result in identifying all areas in the EEZ as EFH. Due to the vastness of such an area, it would be difficult to propose effective conservation measures. Narrowing or refining the extent of EFH can improve NMFS's ability to focus its conservation and management efforts on those habitats most important to the health of the managed species. NMFS agrees that forage species may be an important component of HMS EFH and has taken steps to identify those areas.

Comment 21: Shark pupping and nursery areas remain unprotected. Conserving shark habitat is closely linked with state cooperation. NMFS should continue to fund and encourage research into shark EFH and to publish and distribute the results of such studies.

Response: NMFS disagrees that shark pupping and nursery areas remain unprotected. In 2005, NMFS implemented a time/area closure off North Carolina in shark pupping and nursery areas to reduce the bycatch and mortality of neonate (newborns) and juvenile sandbar sharks as well as all life stages of prohibited dusky sharks. While there are many other areas that may not have the same level of protection, NMFS currently closes the large coastal shark (LCS) fishing season from April through June to reduce impacts on pregnant females who may be moving into coastal areas for pupping. Many states have implemented a similar closure of state waters for LCS shark fishing during these months consistent with the Federal regulations. Finally, most HMS gears have little or no impact on HMS EFH. Bottom longline gear is the only HMS gear that may affect hard bottom habitat such as corals and sponges, but many shark pupping and nursery areas are located outside of these habitat types. NMFS continues to fund shark research, such as surveys conducted through the Cooperative Atlantic States Shark Pupping and Nursery Areas (COASTSPAN) and a similar survey in the Gulf of Mexico (GULFSPAN), and will continue to distribute the results of such studies.

Comment 22: NMFS must continue to recognize that these HMS must be conserved through out their range internationally. Assumptions made on partial information may not necessarily be valid Atlantic-wide.

Response: NMFS agrees that it is important to consider habitat conservation measures throughout the range of HMS which may include international waters, particularly for tunas, swordfish, billfish, and pelagic sharks. NMFS has taken steps in the past to raise the level of awareness of the importance of certain habitats such as Sargassum at ICCAT, and will continue to try to lead the effort in promoting conservation of HMS EFH. However, as discussed in an earlier response, NMFS is only authorized to identify and describe EFH within the U.S. EEZ pursuant to the Magnuson-Stevens Act.

Economic and Social Impacts

Comment 1: The high fuel costs are having a tremendous negative economic impact on all U.S. commercial fisheries. While prices for fuel and fuel products have dramatically risen, the price of fish has nearly collapsed our markets far below the levels necessary for profitable operations, due in part to a flow of imports from largely unregulated sources.

Response: NMFS recognizes that fuel prices have recently risen to above average levels and continue to fluctuate. The Agency is monitoring the impacts of high fuel costs and other expenses as part of ongoing cost and earnings data collection efforts in the HMS fisheries. The Agency encourages fishermen to participate in this data collection effort on a voluntary basis in order to improve the quality of information available on HMS commercial fisheries. The trend in ex-vessel prices for HMS fish has varied by species and is detailed in Chapter 3 of the Final Consolidated HMS FMP. The flow of imports of many HMS products are managed by international agreements, include ICCAT and the supply of imports will vary based on market forces. Details regarding information concerning imports are also detailed in Chapter 3 of the Final Consolidated HMS FMP.

Comment 2: Holding workshops for just owners and captains could have an impact on the market. A number of captains coming in at the same time to the workshop means they will end up fishing at the same time and bringing fish to the market at the same time.

Response: NMFS acknowledges that holding workshops that bring together owners and captains at the same time could have an impact on local markets. As discussed in Chapter 4 of the Final Consolidated HMS FMP regarding workshops, the Agency plans to minimize these impacts by timing workshops to coincide with closed seasons, moon phases, and other events that normally are down times for local HMS fishing operations where workshops will be held. Fishermen will also have the option of attending workshops in other neighboring regions on different dates.

Comment 3: NMFS received comments emphasizing the economic importance of recreational fishing for HMS and concern regarding the economic impacts additional regulations could have on the recreational sector of local economies. Comments include: fishing is a key part of the whole coastal economy and

NMFS should take care not to over-regulate; tourists have many options, and may choose not to fish if the regulations are too burdensome and decrease enjoyment; the Mid-Atlantic $500,000 tournament brings over 2,000 people to Cape May County who will eat, sleep, and shop in this tourism dependent area for the length of the tournament spending an estimated $450,000 in lodging alone and this event is very important to this tourism driven economy, providing jobs for year-round residents and students who earn college money during the summer months; and the economic value of recreational fishing is much greater than that of commercial fishing, and according to a 2001 United States FWS report, the value of the recreational fishery is $116 billion.

Response: NMFS recognizes the economic importance of recreational fishing for HMS, including its impact on tourism, lodging, and local employment. Chapters 3 and 4 of the Final Consolidated HMS FMP have sections regarding billfish that provide extensive information regarding the economic importance of recreational anglers and tournaments.

Comment 4: We are disturbed by the lack of any economic data or references for the recreational sector. This indicates a lack of concern for the recreational sector and ignores the enormous economic impact of this sector.

Response: NMFS has taken measures to improve the amount of economic data and references regarding the recreational sector of the HMS fishery. This information is detailed in Chapters 3 and 4 regarding billfish, and Chapter 4 regarding authorized gear. Direct measures in this HMS FMP regarding the recreational sector include, but are not limited to, the authorization of speargun fishing for Atlantic BAYS tunas, improving BFT quota management, and improving information gathering by requiring vessel owners to report non-tournament recreational landing of swordfish and billfish. The speargun authorization was designed specifically to enhance economic opportunities associated with HMS recreational fishing sector.

Comment 5: The Draft Consolidated HMS FMP does not discuss the socioeconomic impact to the recreational fishing sector. The fishing and boating industry is essential. Nationally, it generates $34 billion annually, which is more than the longliners. The Destin Charterboat fleet has a study that it generates $134 million annually to the local economy. A 2003 article in the Destin Log quotes a Haas Center for Business Research and Economic Development at the University of West Florida study, which says that the Charterboat fleet alone has a $349 million economic impact on Okaloosa and Walton counties.

Response: The HMS FMP assesses the impacts of regulatory alternatives on the HMS recreational fishery. Chapter 3 provides a detailed discussion of the socioeconomic impacts of the recreational HMS fleet. A full assessment of the total economic impacts of all recreational fishing is beyond the scope of this FMP.

The Agency notes the Destin Charterboat fleet study on the impacts of that fleet on the local economy. However, the impact of the HMS portion of the Destin Charterboat fleet is not discernable from that study and thus only represents a portion of the $134 million total annual impact of recreational fishing on the local economy.

Comment 6: In 1989, the SAFMC documented the HMS commercial fisheries above the $100 million threshold. NMFS has a range of values in various documents but certainly below $40–45 million ex-vessel value. Who is responsible for the economic losses over $100 million from unnecessary and cumulative regulatory discard policies?

Response: A combination of long-term market forces, biological changes to species populations and necessary regulatory activities have had an impact on the ex-vessel value of the HMS fisheries. In Chapter 3 of the Final Consolidated HMS FMP, the Agency notes that the ex-vessel value of the HMS fisheries has been estimated to be between $44 and $92 million over the past six years.

Comment 7: The information in the community profiles is so dated that they do not present an accurate current portrayal, at least concerning the HMS fisheries, which has very rapidly declined since the implementation of the 1999 HMS FMP measures, especially the time/area closures implemented in 2000.

Response: While information in community profiles included in this document are now several years old, it represents the best available information and includes the latest U.S. Census data from 2000. However, NMFS intends to update the community profiles. Chapter 9 documents a list of communities that need to be further examined. The Agency recently published a solicitation to update these profiles.

Comment 8: In terms of social and economic issues, the data need to be standardized to recent dollars. I am troubled by NMFS staying with limited knowledge. There is additional work that can be done to understand social and economic changes. There are lots of other things that can be done to understand how people are impacted. Recreational data is a whole area lacking data. The cumulative impacts section is the soft underbelly of this plan. You need to work on this section. It characterizes the impacts without providing much evidence of assessment. NMFS uses soft language. NMFS does not know much about the people that are being regulated, and that is a problem.

Response: Economic data was standardized to 2003 dollars in the Draft Consolidated HMS FMP and to 2004 dollars in the Final Consolidated HMS FMP using the Consumer Price Index (CPI-U). NMFS has taken measures to enhance the information available regarding social and economic changes. The Agency has added information regarding charter boat rates for HMS trips and angler expenditure data. Other research projects throughout the Agency regarding the impacts of the 2005 hurricanes and a recreational fishing survey currently being conducted will further enhance the Agency's knowledge of the characteristics of the regulated community.

Consolidation of the FMPs

Comment 1: NMFS received comments in support and in opposition to the consolidation of the FMPs. Those in support included: we support consolidation of the FMPs contingent on preserving the objectives of the Atlantic billfish plan and the original objectives pertaining to swordfish and traditional swordfish handgear (harpoon and rod-and-reel) fisheries; and we had concerns that several of the most important objectives from the billfish FMP had been left out, but we are pleased that NMFS has addressed those concerns by including them in this draft. As a result, we now support the consolidation. Those comments opposed to the consolidation include: The GMFMC and others recommend that the HMS and Billfish FMPs and APs be kept separate; the GMFMC and others noted that the Billfish FMP is primarily a recreational FMP whereas the Atlantic Tunas, Swordfish and Sharks FMP is both recreational and commercial; the U.S. billfish fisheries are unique and recreational only while swordfish, tunas, and sharks are managed to utilize country-specific quotas; the billfish fishery is the only HMS fishery to practice catch-and-release; those whose efforts have saved and conserved these species should govern it; Atlantic

billfish fishery is the most valuable fishery in the country and ought to retain its distinct and separate status; I have some concerns regarding the consolidation of FMPs and managing billfish for maximum sustainable yield, when it is primarily a catch-and-release fishery, as no social or economic impacts are assessed; Puerto Rico Game Fish Association opposes the consolidation due to the recreational nature of the billfish fishery and because they do not fish for shark or tunas in tournaments. They are concerned that by combining plans, billfish will be viewed as a bycatch species; tuna and other offshore ''meat fish'' species should not be ''consolidated'' with billfish in regulatory legislation; tunas have been traditionally treated as fish to be harvested, not as a ''catch-and-release'' species, and they should have the issues that concern them addressed separately from the unique circumstances concerning marlin and sailfish; economic expenditures involved in the bluefin tuna fishery are just as important as that in the marlin fishery; I favor more micro-management rather than one FMP because it takes so long for changes to occur if everything is consolidated. This way, any particular species will need an entire FMP to take regulatory action; combining fishery management plans is an example of how you prejudice your research and analyses. The longline fishermen come in and take the bait that the billfish seek reducing the number of billfish coming in to areas that were once critical to their life history. A billfish FMP approach would have been to look at bait removal or spawning and nursery areas.

Response: NMFS agrees that commercial fisheries aim to fully utilize a quota, and that many recreational fisheries practice catch-and-release fishing. NMFS also agrees that the billfish fishery is unique in many aspects, and notes that the individual tunas, swordfish, and shark fisheries also have many unique aspects. NMFS believes that these differences between the commercial and recreational fisheries, and the different aspects of the individual recreational fisheries, can be accommodated in a consolidated FMP just as those differences are already accommodated in the existing Atlantic Tunas, Swordfish, and Shark FMP.

Given the interconnected nature of the billfish fishery with other HMS fisheries, both on the water and in the regulatory and policy arenas, as well as the current permitting structure, changes in any of the non-billfish fisheries are likely to have impacts on the billfish fishery. Combining the FMPs should allow those changes to be analyzed more holistically with clear links among the impacts and issues between fisheries. For example, the Billfish FMP has only directed billfish measures while the FMP for Atlantic Tunas, Swordfish, and Sharks has bycatch reduction measures for billfish caught in the swordfish and tuna fisheries. Combining the FMPs will present the whole suite of billfish management measures in one document.

NMFS believes that the decision in 1999 to combine the FMPs for tunas, swordfish, and sharks and to consolidate the actual regulations for all HMS, while a challenge at first, has led to a more holistic view of the fishery. This view has allowed the impacts of management measures on all sectors of tunas, swordfish, and shark fisheries to be fully analyzed whereas before, the links between these fisheries may not have been seen or analyzed so readily.

By combining both FMPs now, NMFS is moving toward an ecosystem-based approach to the management of HMS. Such an approach could ultimately benefit the resource and the people involved. As an example of potential links, at public hearings and in written comments, recreational billfish fishermen have noted that using circle hooks while trolling for blue marlin is impracticable. Similarly, at public hearings and in written comments, recreational tuna fishermen have asked for the use of circle hooks on rod and reel. In many cases, these fishermen fish for tunas and billfish, sometimes on the same trip. While NMFS could implement different regulations for recreational tuna trips and recreational billfish trips, management can be more effective and appropriate by considering the implications on all recreational HMS trips.

Combining the FMPs will not change the composition of the APs in terms of representation by states and sectors (commercial, recreational, academic, or conservation). Also, combining the FMPs will not change the priorities of managing HMS, which are dictated by the Magnuson-Stevens Act and other domestic law. Combining the regulations should not affect the length of time it takes to amend or change the regulations. NMFS has not experienced any delays in changing the regulations for a specific species or gear since combining the tunas, swordfish, and shark FMPs. To the extent that combining the FMPs will allow NMFS and the public to see links between the fisheries easier, combining the FMPs should allow for more efficient and effective regulations.

Comment 2: NMFS received a number of questions regarding the consolidation including: How will the consolidation change HMS management? How is this FMP easier to comprehend? I understand NMFS needs to consolidate, but how does this improve management?

Response: Consolidating the FMPs will not change the existing regulations since they are already consolidated. Rather, consolidating the FMPs should change how HMS fisheries are viewed and the ecological and economic impacts analyzed. Having two separate FMPs can give the impression that the billfish fishery does not affect the tunas, swordfish, and shark fisheries and vice versa. This impression is incorrect. The same fishermen fish for and/or catch all HMS, often on the same trip. Thus, changes in the regulations need to be analyzed and considered across all HMS fisheries. For example, regulations that limit the recreational catch of one species or the gear that can be used could result in changes in recreational effort on other species or on social and economic impacts on the entire recreational community. As described in the response to Comment 1 above, consolidating the FMPs should allow NMFS to take a more holistic view of HMS fisheries and analyze these links. Those analyses should also be more apparent to the affected and other interested parties. Together the analyses and the public comment on the analyses of the impacts and the potential alternatives to a regulation should lead to more efficient and effective management.

Comment 3: NMFS received comments regarding the combination of the APs. These comments included: the number of people on the Billfish AP should not decline; we support combining the APs; it is redundant, confusing and inefficient to have separate APs; the customary joint meetings of the HMS and Billfish APs over the past six years ensured an imbalance of representation by the recreational fishing sector and the result has been lopsided and ineffective advice; and the combined AP should be fair in representing the various user groups.

Response: NMFS is not expecting to change the composition of the APs as a result of consolidating the FMPs. Once this final rule is published, NMFS intends to combine the APs in their entirety. Over time, NMFS will adjust the number of people on the AP and/or representing each group as needed to

ensure a balanced representation of all interested sectors and regions.

Objectives of the FMP

Comment 1: The proposed objectives of the Consolidated HMS FMP are acceptable, including all suggested deletions and revisions, but it is not possible to continuously reduce bycatch and mortality. Logically, as the status of stocks improve, these numbers will likely increase. At some point, NMFS must recognize that incidental catches and mortality will occur and set practical and reasonable levels of allowable incidental catch.

Response: Consistent with National Standard 9, NMFS aims to minimize bycatch to the extent practicable, and to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. As described in the time/area section above, NMFS continues to examine the impact of closures and other bycatch reduction measures to ensure the goals are met. Consistent with protected species incidental take statements, the results of the stock assessments, and the impact of circle hooks on bycatch rates, NMFS may consider modifying the existing time/area closures or changing existing trip limits of the incidental limited access permits.

Comment 2: Regarding Objective 2, ''Atlantic-wide'' is a more appropriate term than using ''management unit'' because even a total prohibition on any domestic fishing effort would not recover the fish stock for most ICCAT species.

Response: NMFS agrees with the comment and made the appropriate change to Objective 2.

Comment 3: We are concerned about Objective 3, to reduce landings of Atlantic billfish in directed and non-directed fisheries. It is unnecessary to reduce directed landings that only come from the recreational sector.

Response: Objective 3 does not address landings of Atlantic billfish. Rather, Objective 3 addresses bycatch in all HMS fisheries and post-release mortality of billfish in the directed billfish fishery.

Comment 4: Objective 4, establish a foundation for international negotiation of conservation and management measure, sounds as though the intent would be to propose the creation of additional international management entities, other than ICCAT, creating a tremendous amount of unnecessary bureaucracy that ultimately weakens the efficient management of these important species. This objective needs to be clarified before final approval.

Response: Objective 4 states that NMFS will establish foundations to work with other international organizations to manage Atlantic HMS. NMFS already works with, and intends to continue working with, several international organizations regarding Atlantic HMS including ICCAT, NAFO, FAO, and CITES.

Comment 5: Regarding Objective 4, the old practice of ''the U.S. goes farthest first'' simply does not work, and often results in the U.S. being diminished in its capabilities and influence within ICCAT.

Response: Objective 4 does not state that the U.S. should work unilaterally to rebuild or maintain Atlantic HMS stocks. Rather, Objective 4 builds in the concept that NMFS will work with international bodies, such as ICCAT, to rebuild or maintain sustainable fisheries.

Comment 6: Objective 7 calls for the management of Atlantic HMS to achieve optimum yield and to provide the greatest benefit to the Nation, including food production. Atlantic billfish should not be managed with the intent to increase food supply and the 250 marlin landing limit is not managing in terms of optimum yield. This landing limit is not based on maximum sustainable yield, nor does it take into account relevant social, economic, or ecological factors. This objective should be reworded to say that Atlantic billfish will be managed to provide the greatest benefit to the nation with respect to recreational opportunities, preserving traditional fisheries to the extent practicable, and taking into account protection of marine ecosystems.

Response: NMFS agrees that Atlantic billfish should not be managed with the intent to increase food supply. NMFS has reworded Objective 7 to clarify its intent.

Comment 7: Objective 12 calls for the promotion of live release and tagging of Atlantic HMS. We do not believe it is in the Nation's best interest to promote live release for all HMS of legal size and those caught within a legal season because any HMS poundage under the quota resulting from live release stands the likely fate of being transferred to a country that will harvest the difference, ultimately reducing the U.S. ICCAT quota. This objective should be reworded to state that NMFS would promote live release and tagging of Atlantic billfish and sub-legal HMS.

Response: NMFS acknowledges that this was not the intent and has reworded the objective to address this issue.

Comment 8: Regarding Objective 12, all hook and line fishing post-release mortality should be addressed.

Response: NMFS believes that this concern is already addressed in Objective 12.

Comment 9: NMFS should make the proposed deletions to Objectives 13 and 14; however, if NMFS does not make these deletions, it must reevaluate its proposed revisions to Objectives 2, 4, 5, and 7.

Response: While NMFS did suggest removing these objectives at the Predraft stage, NMFS did not propose removing them in the Draft Consolidated HMS FMP due to the concern expressed by the recreational billfish community regarding deleting two of the original objectives from the 1988 Billfish FMP. NMFS does not believe that these objectives conflict with objectives 2, 4, 5, and 7. Therefore, no changes to those objectives are needed.

Comment 10: Please eliminate the word ''almost'' from Objective 14: ''Optimize the social and economic benefits to the nation by reserving the billfish resource for its traditional use, which in the continental United States is almost entirely a recreational fishery.''

Response: The word ''almost'' was an error and has been removed. The objective was been clarified to refer only to Atlantic billfish.

Comment 11: Objective 16 needs to be rewritten or eliminated because there is no method for measuring over capitalization in the recreational fleet. Recreational fisheries should not be managed by fleet capacity and over capitalization.

Response: NMFS has decided to delete Objective 16 for the reason stated by the commenter and other reasons, as explained in response to comment 12 below.

Comment 12: Objective 16, the consideration of fishing effort, should not be explicit to commercial fisheries. Latent effort is only a problem in overcapitalized fisheries and the U.S. pelagic longline fishery is undercapitalized. NMFS needs to encourage latent pelagic longline effort to become active or reopen the ''directed'' swordfish permit category in a measured, incremental manner to allow new entrants.

Response: NMFS has deleted Objective 16. While Objective 16 was an important part of the limited access program established in the 1999 FMP, it does not apply to all HMS commercial fisheries. Instead, NMFS has reworded Objective 17 to create a management system to make fleet capacity commensurate with resource status.

Comment 13: Regarding Objective 18, NMFS should not condone a reallocation that is contrary to the intent of the Magnuson-Stevens Act.

Response: Objective 18 was combined with Objective 17 and addresses fleet capacity and resource status. This objective does not address reallocation contrary to the Magnuson-Stevens Act.

Comment Period/Outreach

Comment 1: NMFS received several comments regarding the length of the comment period as a result of hurricanes. These comments are: due to the impacts of Hurricane Katrina on the fishing fleets in the Gulf of Mexico and the lack of communication with people in that area, NMFS should consider a substantial extension of the comment period and consideration of suspending the scheduled public hearings; a large portion of the longline fleet is damaged and without communications - they cannot respond to the proposal at this time; we are sensitive to extension of comment period to accommodate the Gulf of Mexico Area, but we do not want to see an overly lengthy delay in the process.

Response: NMFS agrees that Hurricanes Katrina and Rita severely affected fishermen, infrastructures, communication, and communities in the Gulf of Mexico region. As a result, NMFS extended the comment period on the Draft Consolidated HMS FMP and proposed rule from October 18, 2005, to March 1, 2006. NMFS also rescheduled three public hearings in the area from September/October to January and February. NMFS believes that this extension in the comment period and rescheduling of public hearings gave affected entities an opportunity to review and comment on the Draft Consolidated HMS FMP and its proposed rule without delaying the implementation of the management measures significantly.

Comment 2: NMFS received a number of comments about the advertisement of public hearings and the Draft Consolidated HMS FMP including: many of the public hearings are not well publicized, which leads the Agency to miss a lot of key people at those hearings; a lot people at the fish pier did not know about this hearing; NMFS should hold additional hearings in the same areas; without better publication to increase participation, NMFS is not going to get enough comment from the people who are going to be affected by this rule; NMFS should improve its outreach to magazines; NMFS needs to buy mail and email lists of anglers from publicly available sources and send them meeting notices to ensure adequate public participation; NMFS should use the mailing and email addresses provided when applying for permits to notify the industry; NMFS has adequately informed us through various sources (e.g., internet, facsimile, and public hearing notices) of all germane and relevant issues, options, and comment deadlines; your notices are all fuzzy, full of **Federal Register** type language - they should be earlier in the process, more widely distributed, and focused on the user groups in simple language.

Response: NMFS agrees that public participation and outreach regarding proposed or final management measures is critical to the management of HMS. NMFS attempts to notify all interested parties of all actions using a variety of methods. The official notification is through the **Federal Register**. The **Federal Register** is available on the web at *http://www.gpoaccess.gov/fr/index.html*. Alternatively, interested parties can go to *http://www.regulations.gov* to review and comment on all proposed rules and documents open for public comment throughout the Federal government. Documents can be searched by Agency, topic, and date. NMFS also releases information regarding proposed and final rules and fishing seasons for HMS through the HMS fax network. NMFS intends to develop an email system that will allow anyone to sign up to receive these information packages. These information packages are also usually published on Fishnews, an electronic newsletter produced weekly by NMFS. To sign up for this newsletter, go on the web to *http://www.nmfs.noaa.gov*. NMFS issues press releases, which the media can publish in fishing magazines and local newspapers, regarding public hearings and proposed rules. However, NMFS cannot require these sources of information to publish information regarding proposed rules or public hearings. NMFS has tried using the email addresses included in the permit application to provide HMS fishermen with information about their permits. Often times, the email addresses have proved incorrect and the information was not delivered. Nonetheless, NMFS is working to improve communication with constituents and is open to additional suggestions on how to improve outreach.

Comment 3: I found the public hearing presentations completely frustrating with biomass, metric tons, and other words and numbers used as if I were in a marine biology class. At the end of the presentation, the billfish and tuna changes were slipped in as if to lull us into sleep so that the changes slip by unnoticed. It appeared as if the intent of the presentation was to confuse the average angler with statistical data.

Response: NMFS agrees that information regarding stock status and quotas can be confusing. However, this information is the basis for many of the management measures that were proposed and will be the basis of many of the final management measures. Without an understanding of the basic information regarding life history, stock status, maximum sustainable yield, and other concepts, the reasons and impacts of all the alternatives considered cannot be explained. NMFS presented the information to explain the basis of any proposals or decisions and why one alternative was preferred over another. NMFS welcomes any specific comments on the presentations that would improve the clarity of the presentations.

Comment 4: If NMFS accepts comments by email, the Agency should require Digital Certificates to authenticate that the comments were from the identified party and was not contaminated in transit.

Response: NMFS accepts comments by email. To date, NMFS has not had any problems regarding authenticating the sender of the comment. However, NMFS will continue to examine this and other technological issues.

Comment 5: Please limit your future rulemakings to fewer topics. Large documents like this one are too difficult for many of your constituents to comprehend.

Response: NMFS agrees that large documents with many issues are difficult to understand. To the extent that rulemakings can be limited, NMFS will attempt to simplify and reduce the issues in the future. However, to some extent, rulemakings are dictated by priorities and the need to act on certain issues. Thus, some rulemakings may have more issues than others.

General

Comment 1: NMFS received several comments on how the overall rulemaking process works. These comments include: NMFS needs to clarify if we have a choice or if the decision on these proposed actions is already made?; what agency is pushing for these changes?; there is an overriding opinion that NMFS does not listen during these comment periods; it is difficult for us to know how and where to get involved; during scoping, it would be nice to know that the information we provide is helping to form future regulations.

Response: NMFS relies on public comment and participation at all stages when conducting rulemaking. The

comments received during scoping were crucial for defining the scope of this rulemaking and the alternatives considered. The issues explored in the rulemaking were not ''pushed'' by any particular agency. Rather they were considered as a result of the comments received during scoping and management needs as dictated by the Magnuson-Stevens Act and other domestic laws. Public comment at the proposed rule stage is critical in helping NMFS decide whether to implement certain measures. Often, as a result of public comment, NMFS decides not to implement or to redesign one or more of the proposed management measures. For example, in this rulemaking NMFS is not implementing several proposed measures including removal of the Angling Category North/South line and clarifying the commercial definition of greenstick. When considering public comments, NMFS does not look at the quantity of public comments received but the quality and issues raised in each individual comment. Every written comment and every statement made at a public hearing is considered. In every final rule, NMFS responds to the comments received during the public comment period. At that time, interested parties can see how their comments affected the decisions of the Agency.

Comment 2: I am opposed to management via Petition for Rulemaking. It undermines the role of the Advisory Panels and the International Advisory Committee.

Response: The public may petition an agency for rulemaking. NMFS is required to respond to any petition that is filed. This process does not undermine the role of the Advisory Panel or the ICCAT Advisory Committee as these parties can comment on the adequacy of the Petition for Rulemaking, as appropriate, or any rulemaking that results from the Petition.

Comment 3: NMFS received several comments regarding the relationship of the FMP to the Magnuson-Stevens Act including: Will this FMP be consistent with the revisions/reauthorization of the Magnuson-Stevens Act?; NMFS is not following its own rules in regard to National Standard 4 of the Magnuson-Stevens Act (fair and equitable distribution of fishing privileges).

Response: The Final Consolidated HMS FMP will be consistent with the current Magnuson-Stevens Act, including the National Standards. In regard to National Standard 4, none of the selected alternatives discriminate between residents of different states. While NMFS is tracking congressional actions to reauthorize the Magnuson-Stevens Act, it cannot predict the outcome of the reauthorization process. If the M-S Act is reauthorized, NMFS will implement appropriate changes in a future rulemaking.

Comment 4: What management measures are applicable to the Caribbean?

Response: All management measures for HMS are applicable to fishermen fishing in the Atlantic, including the Gulf of Mexico and the Caribbean.

Comment 5: NMFS is allowing so much overfishing of one species after another, that our children have no expectation of there being any fish in the ocean when they grow up.

Response: While overfishing does continue for some species, other species are being rebuilt. In the case of HMS, since the 1999 FMP, blacktip sharks have been rebuilt and other species such as bigeye tuna and Atlantic sharpnose sharks are still considered healthy. NMFS continues to monitor the status of all HMS and take appropriate action, consistent with the Magnuson-Stevens Act and ATCA, to prevent overfishing, rebuild overfished stocks, and maintain optimum yield.

Comment 6: For any HMS management program to be effective, fair, and reasonable to U.S. fishermen and anglers, international transference and comparable compliance of management mitigation measures must be adopted by the global HMS fishing community. Our fishermen practice and embrace the most effective and stringent conservation measures in the world and U.S. fishermen and anglers suffer economic hardships and fishing days due to these measures. However, few international partners practice any conservation at all. The U.S. needs to continue to lead the conservation initiative, but it is unfair to assume that other countries will follow our example if we only put our fishermen out of business or deny them the opportunity to fish for quota.

Response: NMFS agrees that effective management of HMS requires international cooperation and compliance to management measures. NMFS also agrees that the U.S. needs to indicate to other nations that U.S. fishermen can meet their conservation goals while also remaining economically viable. NMFS and the Department of State continue to work through ICCAT to enforce compliance of existing management measures and end illegal, unreported, and unregulated fishing. Additionally, in this rulemaking, NMFS either provides additional opportunities for U.S. fishermen to take the quota (e.g., changing the time periods and subquotas for the General category) or provides the groundwork for future opportunities (e.g., establishes criteria to modify existing time/area closures).

Comment 7: Remove ''including landings'' from the third bullet on the bottom half of page 1–40 of the Draft Plan. The emphasis is properly on reducing mortality and post-release mortality.

Response: This comment refers to one of the specific goals of this rulemaking, not one of the objectives of the FMP. NMFS agrees and has reworded the goal accordingly.

Comment 8: In the Management History (section 1.1), include ATCA provision, ''shall not disadvantage U.S. fishermen relative to their foreign counterparts.''

Response: That provision (evaluate the likely effects of conservation and management measures on participants and minimize, to the extent practicable, any disadvantage to U.S. fishermen in relation to foreign competitors) is not a requirement of ATCA. It is a requirement under the Magnuson-Stevens Act (16 U.S.C. 1854 (g)(1)(B)). A description of this provision is included in the description of the management history in Chapter 1 and the requirements of the Magnuson-Stevens Act in Chapter 11 of the HMS FMP.

Comment 9: In the section of Chapter 1 regarding the pre 1999 Atlantic tunas management section, NMFS needs to clarify that the longline fishery does not seek a directed fishery on the currently overfished stock of bluefin tuna.

Response: This section has been moved to Chapter 3 in the Final Consolidated HMS FMP. Together, this section along with the other sections in Chapter 3 regarding the landings by gear and the status of the stocks indicate that the pelagic longline fishery is prohibited from targeting bluefin tuna.

Comment 10: The HMS longline fishery was unaware of NMFS's ''technical revisions'' following completion of the HMS FMP in 1999, which changed the Atlantic Tunas longline permit to a ''limited access'' status. NMFS should create an opportunity for longline vessels with valid swordfish and shark permits to obtain an Atlantic Tunas longline permit. This will help to reduce or eliminate unnecessary discards and encourage the return of pelagic longline fishing effort.

Response: As described in the 1999 Atlantic Tunas, Swordfish, and Shark FMP, NMFS made the Atlantic tunas longline permit a limited access permit, along with the swordfish and shark permits, at the request of the fishing

industry in order to close a potential loophole in the regulations. The technical revisions to the rule implementing the 1999 FMP clarified that intent and did not make any substantial changes. Nonetheless, NMFS intends to conduct a rulemaking to reform certain aspects of the HMS permitting system and may consider changes based on this concern in that rulemaking.

i. Recreational

Comment 11: NMFS received general comments related to recreational fishing including: I will not stand for the over-regulation of recreational fishing; and, NMFS has done nothing for the recreational fisherman but give him table scraps and ruined fishery resources.

Response: NMFS recognizes the value and important contribution of recreational fishermen throughout HMS fisheries. The Agency continues to take numerous steps to recognize this critical sector of the fishery, while ensuring that recreational effort is properly accounted for and managed to assist stock recovery. Comments from the recreational sector, and others, were fully considered in deciding upon the management measures in the Final Consolidated HMS FMP. For example, NMFS did not select the alternative that would have prohibited landings of white marlin based, in part, upon comments indicating that this alternative could produce sizeable adverse social and economic impacts upon recreational fishermen. NMFS believes, however, that the selected alternative to require circle hooks when using natural baits in billfish tournaments is appropriate, and is not overly burdensome. Many HMS recreational anglers already practice catch and release fishing for white marlin and other species. However, the mortality rate associated with catch and release of these species is now estimated to be substantially higher than previously thought. The use of circle hooks when deploying natural bait in billfish tournaments is an important step towards reducing billfish fishing mortality, and will help to maintain the highest availability of billfishes to the United States recreational fishery. Billfish tournament anglers must comply with the new circle hook requirement so that these species may better survive the catch and release experience. NMFS strongly disagrees with the comment that recreational fishermen have been given table scraps and ruined fishery resources. Numerous examples could be cited to demonstrate the balanced consideration that is given to recreational HMS fishery interests. Foremost, the recreational sector is, and will continue to be, prominently represented on the HMS Advisory Panel. Additionally, several large areas are closed year-round or seasonally to commercial HMS longline vessels, whereas recreational anglers retain full access to these areas. The recreational sector has benefited greatly from this access, and is currently enjoying the resurgence of recreational fishing for swordfish and other species in these areas. Also, the commercial sale of Atlantic billfish has been prohibited since 1988. To reinforce the recreational nature of this fishery, this rule prohibits the possession or retention of any Atlantic billfish for vessels issued a commercial permit and operating outside of a tournament. This rule also prohibits fishing for HMS in the Madison-Swanson and Steamboat Lumps Marine Reserves, with the notable exception that high-speed trolling is allowed during the prime recreational summer fishing months.

Comment 12: Recreational fishing should be truly recreational fishing. A CHB vessel operator knows where to go fishing, so it gives the recreational fisherman onboard an advantage. CHB vessel operators use this expertise to sell the catch from the recreational fishery. This practice gives access to the recreational fishery where only the commercial fishermen typically go. The CHB vessel is already getting paid to go out there, he does not need to also get money from selling the tunas. NMFS should decrease bag limits on charter/headboats to avoid incentive to sell recreationally caught fish.

Response: NMFS regulates and manages HMS CHB permit holders differently than HMS recreational or commercial permit holders due to the unique characteristics of the CHB sector. These vessels may be both recreational and commercial, so the regulations governing them are necessarily different. For instance, some CHB captains may fish commercially for tunas on one trip, and then fish under recreational retention limits when carrying paying passengers the next day. NMFS believes that the regulations governing the sale of HMS from CHB vessels are appropriate. CHB vessels that also possess commercial limited access permits are subject to recreational catch limits when engaged in for-hire fishing, but may sell tunas (except for BFT caught under the recreational angling category regulations, i.e., BFT between 27 inches and 73 inches CFL or trophy fish greater than 73 inches) on non for-hire trips. CHB vessels may sell sharks and swordfish only if the appropriate commercial shark and/or swordfish permits have also been issued to the vessel.

ii. Commercial Fishery

Comment 13: The U.S. should inflict penalties and tariffs on countries that do not follow similar rules as the U.S.; push to stop longlining worldwide; stop all longlining in the United States now; and make it illegal to import any fish from other countries that longline, do not follow conservation limits, and do not require longlines to only use circle hooks.

Response: The U.S. has been a leader internationally in promoting fishing practices that reduce bycatch and promote conservation of HMS and other fish stocks. Pelagic longlining gear is not being prohibited at this time due to reasons discussed in the response to Comment 36 of the Time/Area Closures section. NMFS believes that international cooperation, including sharing science and technology such as circle hooks and bycatch reduction gears, is the primary and most effective means to achieve conservation goals. The U.S. will continue to promote these types of measures both domestically and internationally, and will encourage efforts by other countries to implement similar measures.

Comment 14: Are fish that are caught by commercial permit holders and retained for personal use counted against the quota?

Response: This rule prohibits vessels issued commercial permits and operating outside of a tournament from possessing, retaining, or taking Atlantic billfish from the management unit. Under this rule, only fishermen issued either an HMS Angling or Charter/headboat permit could take or possess Atlantic billfish. Additionally, General category fishermen fishing in a registered tournament could take and possess Atlantic billfish. In the case of General category fishermen participating in a tournament, the tournament operator must report any billfish landed in the tournament. Charter/headboat vessel owners are required to report billfish under the recreational reporting requirements. Atlantic marlin landings are counted against the 250–fish landing limit. All landings from commercial shark or swordfish vessels must be reported in the HMS logbook, if selected for reporting, regardless of whether the fish are retained for personal use. Sharks landed by commercial permit holders are counted against commercial quotas. A swordfish from the North Atlantic stock caught prior to a directed fishery

closure by a vessel with a directed or handgear swordfish permit is counted against the directed fishery quota. A North Atlantic swordfish landed by a vessel issued an incidental swordfish permit or a Charter/headboat permit or landed after the directed swordfish fishery is closed is counted against the incidental catch quota. Owners of Atlantic Tunas vessels must also report landings in the HMS logbook, if selected for reporting. There are no quotas for bigeye, albacore, yellowfin, or skipjack tunas. BFT landed but not sold must be reported and are applied to the quota category according to the permit category of the vessel from which it was landed.

Comment 15: All commercial vessels that have not landed a fish in the past three years should be ''retired.''

Response: Commercial fishermen can take time away from fishing for certain species for numerous reasons including repairs or replacement of vessels, a desire to help rebuild the stocks, or to pursue opportunities in other fisheries. Many PLL or shark fishermen have currently stopped fishing for HMS due to restrictions such as the time/area closures and short shark seasons. Additionally, for some commercial fisheries, such as the BFT General category fishery, the quota does not allow every permit holder to land a fish every year. Thus, some vessels may not land a BFT for several years. In some fisheries, such as those that are severely overfished, such a measure may be needed to ensure that latent permit holders cannot re-enter the fishery and increase effort. NMFS may conduct a rulemaking in the future to reform the current permit structure. At that time, NMFS may consider measures such as this one, as necessary.

Comment 16: NMFS heard two opposing comments related to commercial vessels affected by the hurricanes last fall. These comments were: NMFS needs to provide buyout programs for the commercial fishery, especially now that vessels active in this fishery have been affected by hurricane Katrina; and NMFS should not subsidize the replacement of commercial vessels affected by hurricane Katrina.

Response: NMFS is still analyzing the impacts of Hurricanes Rita and Katrina on fishermen and communities in the Gulf of Mexico. At this time, NMFS does not know the extent of lasting damage or the most appropriate measures needed to rebuild the affected fisheries, either commercial or recreational. NMFS will take the appropriate actions in the future, as needed.

iii. Longline

Comment 17: Why are there no proposed measures for the commercial PLL fishery in the Draft Consolidated HMS FMP?

Response: Many measures in the HMS FMP could have ancillary impacts on PLL fishery such as the selected alternative C3, going to ICCAT regarding a rebuilding plan for northern albacore tuna, and the selected alternative G2, the transition to a calendar year fishing years. There are also alternatives that specifically consider the PLL fishery. All of the alternatives in the time/area closure section, except for alternative B6, were considered for the PLL fishery in the Draft Consolidated HMS FMP. NMFS is not selecting, at this time, to implement any new closures, except the complementary measures in the Madison-Swanson and Steamboat Lumps Marine Reserves, which will prohibit fishing for and possessing all HMS by all HMS gears in the marine reserves from November through April (except when transiting and the gear is stowed). The possession of Gulf reef fish in these areas is already prohibited year-round (except when transiting and the gear is stowed). From May through October, surface trolling will be the only allowable HMS fishing activity. No new measures were proposed at this time because there are already a number of restrictions, including time/area closures, gear requirements, VMS, observers, and a host of other measures required to reduce bycatch in the PLL fishery. However, NMFS will continue to examine the issue of targeted time/area closures to further reduce bycatch in the future. Other alternatives that could specifically affect PLL fishermen include workshops, changes to the definition of PLL gear, modifications to the definition of the East Florida Coast closed area, and the decision regarding the 25 mt BFT available in the NED.

Comment 18: NMFS should allow the practice of using live baits on PLL gear again.

Response: Currently in the Gulf of Mexico, vessels with PLL gear onboard are prohibited from deploying or fishing with live bait, possessing live bait, or setting up a well or tank to maintain live bait. This prohibition was implemented in lieu of closing the western Gulf of Mexico through a final rule published on August 1, 2000 (65 FR 47214), and became effective on September 1, 2000. It was established to reduce the bycatch of billfish on PLL gear, and this remains an important priority. However, given the recent mandatory requirement for PLL vessels to possess and deploy only large circle hooks and to carry release and disentanglement gear, a reexamination of the live bait prohibition may be warranted. Before this issue could be considered in a future rulemaking, it would be beneficial to obtain additional gear research information, such as bycatch rates and post-release mortality rates of billfish on PLL gear deploying large circle hooks with both live and dead baits.

Comment 19: Without a relaxation of the restrictions, the longline fishery will continue to fail — not due to stock declines but due to over-restrictions.

Response: The PLL fishery has decreased in size over time possibly due to current time/area closures but also due to other factors, which are out of NMFS control (e.g., hurricanes, fuel prices, etc.). At this time, NMFS is not implementing any new closures, except the complementary measures in the Madison-Swanson and Steamboat Lumps Marine Reserves. The U.S. has not been able to catch its swordfish ICCAT quota allocation. While NMFS considered modifications to current time/area closures, none of the modifications considered would have resulted in a large enough increase in target catch to alleviate concerns over uncaught portions of the swordfish quota. NMFS is investigating ways to revitalize the swordfish fishery and is waiting on the results of the ICCAT stock assessments to help determine domestic measures with regard to management of these species.

iv. Swordfish

Comment 20: NMFS received comments regarding the trade of swordfish including: Is there anything in the Draft Consolidated HMS FMP regarding the import of swordfish from countries that have exceeded their ICCAT quota? This exceedance has been a perennial problem at ICCAT Advisory Committee Meetings and it is annoying when fishermen say that this type of fishing encroaches on ''our'' fishery when it is the fishery as a whole, not only the U.S. swordfish fishery; U.S. swordfish fishermen should be provided reasonable opportunity to harvest quota - U.S. has a high demand that U.S. fishermen should have an opportunity to fill; NMFS should prohibit all imports on swordfish and tuna.

Response: ICCAT is an international organization that addresses quota overages and penalties associated with those overages through a process that requires the adoption of recommendations and then implementation of those recommendations by contracting parties. The U.S. is a contracting party

at ICCAT and participates in the evaluation of compliance with quotas. Quota compliance is an important issue right now for the U.S. during ICCAT negotiations. However, ICCAT would be the lead in imposing trade sanctions or other appropriate penalties on a particular country if found to be violating ICCAT agreements. Such actions have been taken by ICCAT in the past. Also, NMFS agrees that overharvests of ICCAT quotas affect the entire swordfish fishery and not just the U.S. allocation, and it is important to manage the fishery as a whole and not to become too focused on just the U.S. quota. NMFS is currently working on different ways to revitalize the U.S. swordfish fishery. An SCRS stock assessment is scheduled for 2006, and the results from this stock assessment will help determine domestic measures for this species.

Comment 21: NMFS received comments regarding the need to revitalize the PLL and/or swordfish fishery including: in the face of our consistently rolled-over quota and fully-rebuilt swordfish stock, why are there no provisions to allow for U.S. fishermen to get newer, more efficient, and safer vessels?; NMFS should eliminate the vessel upgrading restrictions to help revitalize the PLL fishery; what is there in the Draft Consolidated HMS FMP that would allow the U.S. ICCAT Delegation to convince foreign ICCAT Delegations that the U.S. is serious about revitalizing its swordfish fishery in order to utilize the full U.S. ICCAT swordfish quota?; NMFS should make reasonable adjustments to the offshore borders of existing closed areas; eliminate the limited access upgrading criteria; re-evaluate the use of ''live bait'' for circle hooks only; provide a more reasonable trip limit for incidental PLL to eliminate wasteful and unnecessary regulatory discarding; re-open the swordfish handgear fisheries, especially in light of the inability of the U.S. to land its current ICCAT quota; the U.S. is looking at a stockpile for swordfish and BFT; if the U.S. does not have any quota it will be difficult to have a voice in international negotiations; $86 million of swordfish was not caught; this domestic fleet is so over restricted that it cannot harvest the quota; count recreational swordfish live and dead releases as well as commercial catches when negotiating the U.S. quota at ICCAT; eliminate the recreational bag limit to be replaced with a higher minimum size of 47 inches LJFL and authorize anyone holding a general category tuna permit to land swordfish; increase the number of swordfish that may be kept by swordfish incidental permit holders in the Gulf of Mexico or convert all Gulf of Mexico incidental permits to directed permits; adjust the existing PLL time/area closures within the U.S. EEZ in consideration of a fully rebuilt North Atlantic swordfish stock and the U.S. swordfish fishery's ability to harvest its ICCAT quota share; longline fishermen made great sacrifices to rebuild this fish stock and have been the world's leading innovators of ''bycatch friendlier'' pelagic hook and line fishing — NMFS must take action to revitalize this fishery.

Response: For the past several years, the swordfish fishery has been unable to catch the full quota. This is a change from the fishery in the 1990s where the quota was usually taken. In 1997, the quota was overharvested and the fishery was closed. There are a number of possible explanations for the inability of the fleet to harvest the quota including time/area closures to PLL (the primary gear used to harvest swordfish), the reduction in permit holders through limited access, the restrictions on vessel upgrading, the incidental take limits, and the paucity of reporting from the recreational sector. Given the anticipated rebuilt status of swordfish (the next stock assessment is scheduled for September 2006), a number of fishermen and others have asked NMFS to revitalize this fishery. Many people are concerned that without a plan to revitalize the fishery, the quota will be taken from the U.S. and given to other countries, many of which do not view conservation as the U.S. does. NMFS is also concerned about the status of this fishery and its quota. While this rulemaking was not intended to revitalize the swordfish fishery, many of the actions will allow for actions to be taken in the future. For example, NMFS did not choose to modify any existing closures at this time but the selected criteria will allow for modifications to the closed areas and/or experiments to test gears or other fishing methods in the closed areas. Additionally, NMFS is defining buoy gear and clarifying the difference between this commercial gear and the primarily recreational gear of handline. Depending on the stock assessment and the upcoming ICCAT recommendations, NMFS expects to engage in rulemaking in the near future that could help revitalize the swordfish fishery. Any effort to revitalize the fishery must take care not to increase sea turtle takes (the PLL fishery has a jeopardy conclusion under ESA for leatherback sea turtles), marine mammal interactions (there is a PLL Take Reduction Team that is considering methods of reducing interactions under the Marine Mammal Protection Act), and catches of marlin, BFT, and other overfished species. Over time, consistent with the objectives of this FMP, the Magnuson-Stevens Act, Marine Mammal Protection Act, and the ESA, NMFS intends to revitalize the fishery so that swordfish are harvested in a sustainable and economically viable manner and bycatch is minimized to the extent practicable.

Comment 22: NMFS received comments regarding the trip limit for swordfish incidental limited access permit holders. These comments included: NMFS must reevaluate the incidental swordfish trip limits in order to reduce or eliminate unnecessary discards by valid permit holders; there was an allowance of five swordfish in the squid fishery. If a swordfish comes aboard in a trawl, it is dead. Mid-water trawls are not directing or targeting swordfish. So, can there be an allowance for 15 swordfish in a mid-water trawl? It seems to be a waste to throw dead swordfish overboard.

Response: The current trip limits for incidental permit holders and permit holders using mid-water trawls were implemented in 1999 as part of the limited access program for swordfish. At that time, swordfish were overfished, there were a number of latent permit holders, and the quota was being landed. Thus, the limited number of swordfish that could be landed by incidental permit holders or permit holders using mid-water trawls (an unauthorized gear) was appropriate and was aimed at reducing swordfish mortality by fishermen not targeting swordfish, to the extent practicable. The situation has now changed and, depending on the results of the upcoming 2006 stock assessment, NMFS may reconsider these limits in a future rulemaking.

Comment 23: U.S. recreational fishermen should be allowed to sell their swordfish.

Response: Under current HMS regulations, recreational fishermen are not allowed to sell HMS. If fishermen wish to sell their swordfish, they must possess a commercial swordfish limited access permit or obtain one from commercial fishermen who are leaving the fishery. Anecdotal information indicates there are a number of commercial swordfish permits available. However, depending on the type of swordfish permit obtained (directed, handgear, or incidental) these permits could restrict fishermen to the commercial suite of permits and they would not be able to obtain either an

HMS Angling or HMS Charter/Headboat permit. All recreational landings are counted against the domestic quota for swordfish (300 mt dw of the quota are allocated for recreational landings). Comments in the past have indicated concern to the public health regarding the quality of recreationally-caught swordfish. These commenters have noted that while commercial fishermen are trained and have the facilities to maintain fresh swordfish, recreational fishermen generally keep the swordfish in a cooler. Nevertheless, as discussed in Comment 22 above, fishermen have requested that NMFS revitalize the swordfish fishery. The suggestion in this comment may be one potential option for such a goal.

v. Tunas

Comment 24: The Draft Consolidated HMS FMP does not consider the uncertainty associated with estimates of recent BFT recruitment in recent years, the probable outcomes for BFT under different estimates, or the impact on rebuilding of the current high mortality in the Gulf of Mexico. The Draft Consolidated HMS FMP needs to consider this while also keeping in mind the feasibility of changing ICCAT management measures and quotas at the upcoming ICCAT meeting.

Response: The ecological impacts of this final action on BFT are at most, minimal. The overall quotas for each domestic fishing category are not changed, nor are the size classes of BFT that each domestic category targets. The selected alternatives for BFT comply with the ICCAT BFT rebuilding plan, which considers the uncertainty associated with BFT stock assessment analyses and reviews the efficacy of additional management options to reduce BFT bycatch in the Gulf of Mexico. The selected alternatives also continues the prohibition on directed fishing for BFT in the Gulf of Mexico. ICCAT is scheduled to reassess the West Atlantic BFT stock in June 2006, and the assessment will be evaluated at the upcoming annual ICCAT meeting in November 2006. NMFS will implement any changes to the rebuilding plan as required under ATCA.

Comment 25: Filleting tunas at-sea should be acceptable on HMS CHB vessels. By allowing filleting at-sea, the catch can be prepared and put on ice much sooner than if cleaning occurs upon returning to the dock; it will be better for public safety because tuna deteriorate quickly in warm summer and fall months; and preparing tuna sooner also improves the quality of the meat, and ultimately, angler satisfaction. The season is relatively short, so filleting at-sea allows for a quicker turn around time between trips. It will not compromise enforcement of size limits, retention limits, and species identification. Retaining the racks can facilitate enforcement.

Response: Under current regulations at 50 CFR 635.30(a), ''persons who own or operate a fishing vessel that possesses an Atlantic tuna in the Atlantic Ocean or that lands an Atlantic tuna in an Atlantic coastal port must maintain such Atlantic tuna through offloading either in round form or eviscerated with the head and fins removed, provided that one pectoral fin and the tail remain attached.'' ''Eviscerated'' is defined as a fish that has only the alimentary organs removed. The regulations are intended to aid in enforcing the minimum size limit, retention limits, and species identification. Over the past several years, the HMS CHB industry, more specifically the headboat sector, has requested that it be exempt from the current regulations and allowed to fillet Atlantic tunas at sea. While authorizing filleting at-sea may have social and economic benefits for the industry as the commenter suggests, waiving the current regulations could render enforcement of size limits, retention limits, and species identification difficult, thus NMFS is not able to authorize such actions at this time.

vi. Sharks

Comment 26: NMFS has placed sharks as the lowest priority. NMFS has not adequately addressed persistent overfishing, population depletion, and the need for a precautionary approach with regard to a number of exceptionally vulnerable coastal and pelagic shark species. The Draft Consolidated HMS FMP lacks goals, timetables, and milestones toward conserving sharks and their habitats.

Response: The implementing regulations for Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks (December 24, 2003; 68 FR 74746) included management measures to address overfishing and population depletion of sharks. These management measures included, but were not limited to: aggregating the LCS shark complex, using MSY as a basis for setting commercial quotas, implementing a 4,000 lb trip limit in the commercial LCS fishery, establishing regional commercial quotas and trimester seasons, establishing gear restrictions to reduce bycatch, and establishment of a time area closure in the mid Atlantic region from January to July each year to reduce interactions with sandbar and prohibited dusky sharks. There are also several shark management measures in this final rule that will address overfishing of finetooth sharks, improve shark dealer identification of commercially harvested shark species, and require fishermen to leave the second dorsal and anal fin on all commercially landed sharks to facilitate improved identification, among others. Furthermore, the HMS Management Division is currently engaged in a proposed rulemaking (March, 29, 2006; 71 FR 15680) that may facilitate improved handling, release, and disentanglement of non-target bycatch, including sharks, sea turtles, and smalltooth sawfish. NMFS recently released a dusky shark assessment (May 25, 2006; 71 FR 30123), and is considering the results of the Canadian porbeagle assessment. The final LCS stock assessment review workshop was held in June of this year, and the SCS stock assessment workshops will begin in 2007. Additional management measures for shark fisheries in the Atlantic Ocean may be implemented in the future, as necessary.

Comment 27: NMFS should release and begin work to address the findings of LCS assessment as soon as possible.

Response: The LCS stock assessment is following the SEDAR process, which emphasizes constituent and stakeholder participation in assessment development and transparency in the assessment process. As documents related to the LCS assessment are completed they have been placed on the SEDAR webpage at: *http://www.sefsc.noaa.gov/sedar/*. The final LCS review workshop was held on June 5–9, 2006. NMFS will review the final determinations from the workshop and proceed with regulatory or management actions as necessary, consistent with Magnuson-Stevens Act, the HMS FMP, and other federal laws.

Comment 28: NMFS has relaxed the conservation framework for exceptionally vulnerable deepwater sharks by removing this special grouping from the management unit. Contrary to NFMS assertions, the finning prohibition alone is not sufficient to conserve these species. NMFS should add deepwater sharks to the list of prohibited shark species in subsequent rulemaking.

Response: The deepwater sharks were added to the management unit in 1999 because the Agency wanted to ensure that finning was prohibited for all sharks, including deepwater sharks. When deepwater sharks were included in the management unit, there were no other management regulations in place (i.e., permitting, reporting, trip limits, minimum size). NMFS believes that

maintaining data collection only on the deepwater sharks is sufficient because they are not targeted in the shark fishery. Prohibiting landings of these species would not likely reduce mortality, as most of these sharks are dead at haulback and take of these species is a rare occurrence. Furthermore, NMFS does not want to further jeopardize the collection of data on these species, which is a rare event, by including them in the prohibited species management unit. Currently, on the rare occasions when fishermen catch a deepwater shark, they can give it to a scientist. If the species were prohibited, every fisherman and scientist who might catch a deepwater shark and who would want to retain any part of it for research would need to have an EFP on the off chance that such a shark would be caught. Nonetheless, if directed fisheries for deepwater sharks are developed and/or extensive landings of these species begins to occur as bycatch in other fisheries, the Agency may implement additional measures.

Comment 29: NMFS needs to review and release the long-awaited population assessment for dusky sharks, as a matter of priority. We are concerned about the more than 23,000 dusky sharks landed in 2003, despite their prohibited species status. NMFS should investigate and address this problem immediately.

Response: The Southeast Fishery Science Center recently released the dusky shark assessment (May 25, 2006; 71 FR 30123). This document is available on the internet (*http://www.sefscpanamalab.noaa.gov/shark/pdf/Dusky__Shark__Assessment.zip*). NMFS is also concerned about the status of dusky sharks; hence, this species has been on the prohibited species list since 1999. In 2003, 23,288 lb dw of dusky sharks were reported landed in commercial shark fisheries. In 2004, only 1,025 lb dw of dusky sharks were landed. Effective January 1, 2005, the mid-Atlantic time/area closure closed commercial shark fishing with bottom longline gear from January 1 through July 31 of every year. This area was closed in part to reduce commercial fishery interactions with dusky sharks. NMFS may also implement additional management measures as a result of the recently released dusky shark assessment.

Comment 30: NMFS received comments regarding management of porbeagle sharks including: The porbeagle population is 11 percent of its size in 1961 which is too low; Canada has already listed porbeagle sharks as endangered - the U.S. needs to prohibit all landing immediately and eliminate the directed quota for porbeagle sharks; we are concerned about the continuation of the directed quota for Northwest Atlantic porbeagles, given that this population has been proposed as ''Endangered'' by the IUCN SSG and Canada; NMFS should end the directed fishery for porbeagles by eliminating the directed commercial quota and allowing only incidental landings; we support NMFS stated interest in working with Canada to address porbeagle conservation - such negotiations will be more successful if the U.S. takes action to end directed porbeagle fisheries in U.S. waters; the U.S. should aggressively pursue no directed porbeagle shark fisheries with Canada and within ICCAT.

Response: The U.S. has, on average, landed less than 1 mt of porbeagle sharks in the last four years, most of which was incidental, not directed catch. NMFS, however recognizes the ecological significance of the historical decline in porbeagle sharks, and is currently considering the stock assessment report recently completed by Canada in the fall of 2005. Management alternatives and regulations to prevent further declines in the porbeagle stocks will likely be considered in upcoming rulemaking actions, if necessary.

Comment 31: NMFS needs to make permits available to Puerto Rican shark fishermen or allow them to retain sharks since they are retaining sharks anyway.

Response: All fishermen fishing for HMS are already required through state regulations to have the appropriate HMS permits when fishing in state waters. Additionally, shark fishermen fishing in Federal waters are required to have the appropriate Federal HMS permit consistent with Federal regulations. Fishermen from all states and territories, including Puerto Rico and the Virgin Islands, may face enforcement action if they do not comply with Federal regulations.

Comment 32: NMFS received two comments regarding the need to propose options for adding sharks to the prohibited species list including: NMFS has offered no alternatives in the Draft Consolidated HMS FMP to address depletion of these species (oceanic whitetip, silky sharks, and hammerheads); these species are not targeted but measures to avoid and reduce bycatch of these species are urgently needed. To reduce regulatory discards within the directed and incidental shark fishing fleets, NMFS should consider removing certain species of sharks from the prohibited species list, such as bignose, Caribbean reef, dusky, Galapagos, night, sand tiger, and Caribbean sharpnose.

Response: NMFS did not consider changes to the prohibited species management unit in this rulemaking. Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks established criteria for addition or removal of species to/from the prohibited species group. These four criteria include: there is sufficient biological information to indicate that stock warrants protection, the species is rarely encountered or observed caught in HMS fisheries, the species is not commonly encountered or caught as bycatch in fishing operations, and the species is difficult to distinguish from other prohibited species. NMFS may consider changes to the prohibited species management unit in a future rulemaking, if necessary.

Comment 33: Because smooth dogfish is the only U.S. Atlantic shark that is subject to a directed fishery and not covered by management measures, NMFS should evaluate this fishery and assess the population. NMFS should begin this work immediately, present the findings to the Mid-Atlantic Fisheries Management Council (MAFMC), and suggest a way forward as soon as possible.

Response: During the summer of 2005, NMFS received a request from the MAFMC to transfer management of smooth dogfish to the council. NMFS asked for more information regarding why the MAFMC should have sole jurisdiction over the stock. NMFS continues to wait for a response and will work with the Regional Fishery Management Council(s) to determine the appropriate management body for this species.

Comment 34: EPA noted that bycatch of SCS in the Gulf shrimp fishery fell approximately 46 percent following the introduction of turtle excluder devices in 1999. If this trend continues, this represents an encouraging level of success for the use of turtle excluder devices. EPA also noted that data entries for Table 3.90 in the Draft Consolidated HMS FMP for the year 1999 and 2000 were the same and assumed that 2000 data were estimated.

Response: NMFS agrees that turtle excluder devices should reduce the amount of bycatch. Regarding 1999 and 2000 data, 1999 data were calculated as the average of the value of 1992 to 1997 divided by two in order to account for the effect of the turtle excluder devices. Data from 2000 were assumed to be the same as the 1999 data.

Comment 35: EPA notes that Table 3.90 indicates that the dressed weights of SCS are approximately one pound per shark. This suggests that these are small

sharks that would have little commercial value.

Response: SCS are generally the small sharks, and they have the lowest commercial value of all Atlantic sharks, generally less than $0.50 per pound. Many fishermen use these species as bait. In 2004, not including shark fin values, the SCS fishery was worth approximately $340,000 compared to $2.7M for LCS and just over $500,000 for pelagic sharks.

vii. Fishing Mortality and Bycatch Reduction

Comment 36: Table 3.24 contains an error that has been repeated in several documents. The Technical Memorandum — SEFSC–515 cited as Garrison 2003 contains an error in addition concerning the total number of observed sets (both Total and non-NED) for 2001. The correct Total is 584 and non-NED is 398, which would change the correct percentages to 5.4 percent and 3.7 percent, respectively. Also the 2002 Non-NED percentage should be 3.9 percent. Lance Garrison confirms these inadvertent errors in his published errata affixed to the document.

Response: NMFS has made the requested corrections.

Comment 37: Has NMFS considered the fact that the Gulf of Mexico is a special region with special needs? Could there be regulations on a regional basis (i.e., regulations different for the Gulf of Mexico from that of other regions)?

Response: It is possible to implement regulations on an area-specific basis to fit the special needs of a fishery whenever possible. NMFS has implemented different regulations for the pelagic longline fishery on an area-specific basis in the past. For instance, a live bait prohibition for this fishery has been implemented in the Gulf of Mexico in an attempt to reduce the bycatch of billfish. NMFS has also implemented regional allocations and seasons for LCS and SCS including ones for the Gulf of Mexico, and BFT regulations in the Gulf of Mexico are different than those along the east coast. Another example of regionally-specific regulations is the requirement to use only 18/0 or larger circle hooks in the NED for the pelagic longline fishery while requiring 16/0 or larger circle hooks elsewhere. NMFS will continue to evaluate alternative management measures in light of the specific needs of a fishery when possible.

Comment 38: NMFS should request that the Gulf of Mexico Fishery Management Council and the Gulf states cooperate with NMFS to minimize shark bycatch associated with fisheries under their purview (i.e., Gulf of Mexico shrimp and menhaden fisheries).

Response: NMFS agrees that cooperation amongst the States, Regional Fishery Management Councils, and the Agency can help to address bycatch issues, particularly in those fisheries that cross jurisdictional boundaries. NMFS has contacted the Gulf and South Atlantic States and Regional Fishery Management Councils in an attempt to identify fisheries where finetooth shark bycatch may be occurring. NMFS also consulted with all Regional Fishery Management Councils and both the Atlantic and Gulf States Marine Fisheries Commissions regarding the Draft Consolidated HMS FMP and its proposed measures.

Comment 39: NMFS has failed to meaningfully reduce longline bycatch since 1997. While time/area closures give the appearance that something is being done, this is not the only answer.

Response: NMFS disagrees that longline bycatch has not been meaningfully reduced. NMFS analyzed the reported landings and bycatch in the pelagic longline fishery from 1997–99 versus 2001–03 to measure the effectiveness of the time/area closures implemented in 2000–01. The analyses showed that the existing closures have been effective at reducing bycatch of protected species and non-target HMS and have provided positive ecological benefits. For example, the overall number of reported discards of swordfish, bluefin and bigeye tunas, pelagic sharks, blue and white marlin, sailfish, and spearfish have all declined by more than 30 percent. The reported discards of blue and white marlin declined by about 50 percent and sailfish discards declined by almost 75 percent. The reported number of sea turtles caught and released declined by almost 28 percent.

It appears that bluefin tuna discards in the MAB and NEC have been reduced considerably since the implementation of the June closure in 1999. Reported discards of BFT prior to implementation of the closure ranged from 558 to over 2,700 per year. Since 1999, the number of bluefin tuna reported discarded has remained below 500 per year. The number of swordfish kept in the MAB and NEC has increased since the closure was implemented while the number of billfish discarded has declined.

NMFS agrees that time/area closures are not the only management tool that can be utilized to reduce bycatch. NMFS has also implemented circle hook and bait requirements for the pelagic longline fishery and a live bait prohibition for that fishery in the Gulf of Mexico as well. These measures are intended to reduce the bycatch of non-target species and protected resources in the pelagic longline fishery.

Comment 40: NMFS should allow longline fishermen to sell their bycatch for charity.

Response: Commercial fishermen are already allowed to sell their catch for whatever purpose unless it is a prohibited species or specific regulations prohibit its retention such as the season is closed, quota has been met, the fish is undersized, or the animal is a protected resource.

Comment 41: NMFS received several comments regarding the need for additional research including: NMFS should research live baiting using circle hooks as a technique to increase catch of YFT and reduce bycatch; NMFS should conduct and/or continue experiments on non-offset circle hooks, circle hooks 20/0 and larger, bait options, and post-hooking effects.

Response: NMFS agrees that additional research can be conducted on a number of topics, including those in this comment and other comments throughout this final rule, to evaluate their effectiveness in reducing bycatch of non-target species and protected resources. NMFS intends to continue to evaluate research proposals in many of these areas. New research is dependent on funding availability.

Comment 42: In our scoping comments, we set forth a proposal for NMFS to consider regarding bycatch. NMFS left that proposal out of the draft FMP even though it is required under international and domestic laws to develop fully and analyze that proposal.

Response: While every comment is considered, NMFS disagrees that all comments offered during the scoping process need to be developed fully and analyzed. The Agency considered a broad range of alternatives to address bycatch in the Draft FMP, however, not all of these were fully developed and analyzed for a variety of reasons. There may have been more effective alternatives considered for further analysis or a proposed measure was found to not meet the needs or objectives of the FMP, and therefore was not considered further.

Comment 43: NMFS received comments about the need to implement a cap or quota on bycatch. These comments include: to reduce bycatch, NMFS should implement a hard cap system. Such a system would, among other things, set limits on fishing mortality of marine life, provide accountability by dividing limits between fishing sectors, set limits that would stop fishing for that sector, reward clean fishing, prevent a race to

fish, and reduce bycatch. Such caps should be set for commercially targeted species, spawning species, recreationally targeted species, endangered species, marine mammals, and other species, such as sea birds, that are needed to promote the health of the marine ecosystem; NMFS should implement a hard cap on the takes of protected species similar to the one successfully implemented in the Western Pacific. This would remedy the historic failure of the pelagic longline fleet to maintain up-to-date records of turtle bycatch, allow for timely corrective action to reinitiate under the ESA, and help the fleet stay within take levels intended to protect against the jeopardy to the species. Such a system would require real time observer reporting and a ''yellow light'' system to warn fishermen when takes are approaching the limit.

Response: Additional measures designed to reduce bycatch could be examined in the future, possibly on a sector by sector basis as suggested by the commenter. However, a hard cap system may not be appropriate or feasible in every sector due to logistical constraints such as placing observers on every recreational and commercial vessel, limited resources, and other management measures that are already in place for the fishery such as mandatory circle hook use for the PLL fishery. There are also international concerns related to rebuilding plans and the ATCA, fishing effort and mortality rates, and bycatch that would need to be considered prior to establishing hard caps. A hard cap on the number of protected species interactions (e.g., sea turtles) in all HMS fisheries already exists through the incidental take statement. Each fishery is operating under an incidental take statement that once reached can close that fishery and/or result in a re-initiation of consultation under Section 7 of the ESA.

Comment 44: NMFS has a study that indicates a default standardized bycatch reporting methodology (SBRM) must include observer coverage of at least 20 percent (or 50 percent when endangered species are at risk). Rather than analyzing its needs to meet the conservation and management goals of the fishery, NMFS claims the study was simplistic and failed to account for ''limited resources.'' This arbitrary failure to analyze alternatives for establishing a reporting methodology violates NEPA and the Magnuson-Stevens Act. NEPA requires NMFS to undertake an analysis to determine the level of observer coverage necessary to provide accurate and precise data for each conservation and management need addressed in the draft FMP. Congress and the Magnuson-Stevens Act do not give NMFS the ability to ignore the reporting methodology based on ''limited resources.'' Nevertheless, a NEPA analysis could consider them.

Response: The effectiveness of any SBRM depends on its ability to estimate the type and quantity of bycatch precisely and accurately enough to meet the conservation and management needs of a fishery. The National Bycatch Report contains an in-depth examination of the issues of precision and accuracy in estimating bycatch and how precision relates to sampling and to assessments. The precision of an estimate is often expressed in terms of the coefficient of variation (CV) defined as the standard error of the estimator divided by the estimate. The lower the CV, the more precise the estimate is considered to be. A precise estimate is not necessarily an accurate estimate.

The National Working Group on Bycatch recommended that at-sea sampling designs should be formulated to achieve precision goals for the least amount of observation effort, while also striving to increase accuracy. This can be accomplished through random sample selection, developing appropriate sampling strata and sampling allocation procedures, and by implementing appropriate tests for bias. Sampling programs should be driven by the precision and accuracy required by managers to address management needs for estimating management quantities such as allowable catches through a stock assessment, for evaluating bycatch relative to a management standard such as allowable take, and for developing mitigation mechanisms. The recommended precision goals for estimates of bycatch are defined in terms of the coefficient of variation (CV) of each estimate. For marine mammals and other protected species, including seabirds and sea turtles, the recommended precision goal is a 20–30 percent CV for estimates of interactions for each species/stock taken by a fishery. For fishery resources, excluding protected species, caught as bycatch in a fishery, the recommended precision goal is a 20–30 percent CV for estimates of total discards (aggregated over all species) for the fishery; or if total catch cannot be divided into discards and retained catch, then the goal is a 20–30 percent CV for estimates of total catch (NMFS, 2004a). The report also states that attainment of these goals may not be possible or practical in all fisheries and should be evaluated on a case-by-case basis.

Rago et al., (2005) examined potential sources of bias in commercial fisheries of the Northeast Atlantic by comparing measures of performance for vessels with and without observers. Bias can arise if the vessels with observers onboard consistently catch more or less than other vessels, if trip durations change, or if vessels fish in different areas. Average catches (pounds landed) for observed and total trips compared favorably and the expected differences of the stratum specific means and standard deviations for both kept weight and trip duration was near zero (Rago et al., 2005).

The report cited by this commenter suggests that relatively high percentages of observer coverage are necessary to adequately address potential bias in bycatch estimates from observer programs. However, the examples cited in that report as successful in reducing bias through high observer coverage levels are fisheries comprised of relatively few vessels compared to many other fisheries, including the Atlantic HMS fishery. Their examples are not representative of the issues facing most observer programs and fishery managers, who must work with limited resources to cover large and diverse fisheries. The commenter appears to suggest that simply increasing observer coverage ensures accuracy of the estimates. However, bias due to unrepresentative sampling may not be reduced by increasing sample size through increased observer coverage due to logistical constraints, such as if certain fishermen refuse to take observers, or if certain classes of vessels cannot accommodate observers. Increasing sample size through increased observer coverage may only result in a larger, but still biased, sample due to non-representative sampling. Observer programs strive to achieve samples that are representative of both fishing effort and catches. Representative samples are critical not only for obtaining accurate (i.e., unbiased) estimates of bycatch, but also for collecting information about factors that may be important for mitigating bycatch. Bias may be introduced at several levels such as when vessels are selected for coverage or when only a portion of the haul can be sampled due to weather or other concerns.

NMFS has conducted analyses to determine the level of observer coverage needed for the pelagic longline, bottom longline and shark gillnet fisheries to produce estimates for protected resource interactions with a CV of 0.3 (30 percent) or less. The current target levels of observer coverage are eight percent of total sets for the PLL fishery,

3.9 percent of total effort for the BLL fishery, and 33.8 percent for the shark gillnet fishery outside of the right whale calving season (April 1 through November 14) and 100 percent during right whale calving season (November 15 through March 31). NMFS will continue to provide observer coverage at these levels, subject to available resources.

Comment 45: NEPA requires that the EIS analyze the cumulative effect of all takes on sea turtles, not just the effects of takes in the HMS fisheries. While the pelagic longline fishery is one of the most damaging fisheries to sea turtle populations, a true determination of environmental impacts of this fishery cannot be made without examining the effects of all U.S. fisheries cumulatively.

Response: NMFS agrees that impacts to sea turtles and other protected resources are not limited to takes in HMS fisheries. The environmental impacts of the pelagic longline fishery and a description of the fishery are covered in Chapters 3 and 4 of the Draft HMS FMP. All fisheries and non-fisheries impacts on the status of each protected resource were already analyzed as part of the environmental baseline in the BiOp for the PLL fishery. Because the final actions within this final rule are not outside the scope of the BiOp for the PLL fishery, or the BiOps for other HMS fisheries, NMFS does not consider the actions detrimental to sea turtle populations.

Comment 46: The EIS provides only a cursory analysis of the impacts of HMS fisheries on marine mammals. The current bycatch monitoring methodology is not adequate for the conservation and management needs of marine mammals. Collecting the information is necessary to allow NMFS to devise specific bycatch reduction measures based on the actual behavior of marine mammals in HMS fisheries. NMFS should require fishermen to report in real-time where they place gear and where gear is lost, and to mark gear with colors to indicate the type and location of fishing gear. NMFS must also prioritize the granting of scientific research permits.

Response: The MMPA requires commercial fishermen to report all marine mammal interactions within 48 hours after the end of a fishing trip. Marine mammal interactions have been documented in the pelagic longline fishery and the shark gillnet fishery. Both fisheries are subject to observer coverage at levels that produce estimates of marine mammal interactions with a CV less than 30 percent. For marine mammals and other protected species, including seabirds and sea turtles, the recommended precision goal in the National Bycatch Report is a 20–30 percent CV for estimates of interactions for each species/stock taken by a fishery. In June 2005, NMFS convened the Pelagic Longline Take Reduction Team to assess and reduce the takes of marine mammals, specifically pilot whales and Risso's dolphins, by the pelagic longline fishery. NMFS will take action based on the results of the Pelagic Longline Take Reduction Plan, as necessary.

Comment 47: NMFS must implement comparable bycatch and sea turtle safe conservation certification program on all HMS product imports.

Response: NMFS appreciates this comment. As such a program would be most effective as part of an international program, NMFS may evaluate the efficacy and feasibility of requiring this type of certification program as part of a future action.

Comment 48: While NMFS received a number of comments on ways to better monitor recreational landings including logbook data that is tied to renewing permits, catch cards, and Vessel Trip Reports (VTR), the issue was relegated to one paragraph in the ''Issues for Future Consideration and Outlook'' section. The AP wants to move from survey methods to census methods and that idea is lost in this draft. NMFS should work with ACCSP to implement a mandatory VTR program that provides timely, accurate catch and effort data for the for-hire fleets. NMFS should state that it supports a comparison of existing for-hire VTR catch data with LPS data for the same time periods.

Response: NMFS recognizes the desire to improve the collection of recreational landings data. At the request of NMFS, the National Academy of Science (NAS) recently reviewed both state and federal marine recreational fishery surveys. The review committee's report has been published and the Agency is evaluating the recommendations.

Comment 49: The Agency has a lack of attention to recreational fisheries data collection resulting in negative impacts to the recreational fishery.

Response: NMFS spends considerable time and money collecting data from recreational fisheries, including recreational fisheries for HMS. NMFS staff also spend considerable time and effort monitoring data collection and reviewing recreational fishery data for HMS fisheries. The Agency is evaluating the recommendations of the recent NAS review of marine fishery surveys to identify where improvements may be made.

Comment 50: Maryland catch card data should be used to determine total BFT catch instead of using LPS catch data for Maryland.

Response: NMFS has reviewed the Maryland BFT catch card data from 2002–2005 to evaluate its utility for management purposes. Although current reporting appears to be high, there is a measured level of non-compliance with the program. This non-compliance was determined by comparing directly observed BFT in the intercept portion of the LPS with catch card records. Non-compliance with the Maryland catch card program is currently estimated to be 15 percent. NMFS will continue to work with the Maryland DNR to improve compliance with the catch card program so that NMFS can integrate the data it generates into the monitoring and management program for BFT.

viii. Permitting, Reporting, and Monitoring

Comment 51: NMFS received a number of comments regarding HMS permitting in general. These comments consisted of: NMFS should provided updated HMS regulations to permit holders when they are issued a permit; permits should be renewed on a calendar year basis so fishing groups can notify their memberships and thereby improve renewal compliance; and, NMFS should implement a salt water fishing license for all fishermen in order to develop a database for data collection and observer coverage.

Response: NMFS agrees that the idea of providing copies of relevant regulations when an HMS permit is applied for and sent has merit. However, due to the ever changing dynamics of HMS fisheries, the rules and regulations may change throughout the season. Providing permit holders with a snapshot of the rules and regulations that exist early in the season may lead to a false sense of security that these regulations would remain consistent for the entire season. In an attempt to strike a balance, NMFS includes information on the Atlantic tunas and HMS permits that allow the permit holder to access the most recent information. For instance, NMFS includes a web address and toll-free telephone number where permit holders can locate the most up to date regulations. For those permits that authorize the user to participate in recreational HMS fisheries, NMFS has included the appropriate telephone numbers to report their catch. NMFS is adjusting the annual management timeframe of HMS fisheries to a calendar year, versus a wrap around

fishing year, i.e., June through May of the following year. NMFS will realign the HMS permitting to coincide with the calendar year. For consistency purposes the shark and swordfish commercial permits, both vessel and dealers, will still be issued according to birth month, under the business rules of the Southeast Permitting Office.

Comment 52: NMFS received a comment stating that NMFS should redesign vessel permits based on fishing methods and geographic area. NMFS should combine vessel permitting for coastal pelagics and HMS for the charter boats, headboats, and commercial handgear vessels.

Response: Since the inception of the 1999 FMP, constituents, advisory panel members, NMFS staff, and others have identified a number of issues pertaining to the permitting program. These have included, but are not limited to, further rationalizing some segments of the HMS fisheries, streamlining or simplifying the permitting process, restructuring the permit process to a gear-based permit system from the current species-based permit system, and reopening some segments of the limited access system to allow for the issuance of additional permits. Addressing these issues in the future may be important to the successful long-term stewardship of HMS fisheries, and therefore NMFS may consider restructuring these elements in future rulemakings.

Comment 53: A mandatory HMS tournament permit (alternative E9) would help to provide an exact count of the number of marlin landed in tournaments.

Response: In the Draft Consolidated HMS FMP, a mandatory HMS tournament permit (alternative E9) was considered, but not further analyzed, because improvements to tournament registration, data collection, and enforceability may be achieved with considerably less burden to the public and the government by issuing a confirmation number, rather than a permit, to tournament operators that have registered their tournaments with NMFS. Because HMS tournaments frequently change operators, names, and dates, a tournament permit would be very burdensome to administer and enforce. Therefore, the regulations are being clarified to specify that HMS tournament registration is not considered complete unless the operator has received a confirmation number from the HMS Management Division of NMFS. Requiring a tournament confirmation number, issued by the HMS Management Division, will achieve the same objective (i.e., increased compliance) as a tournament permit. Since all tournaments awarding points or prizes for HMS are currently required to be registered with NMFS, and because all billfish tournaments are currently selected for reporting, the Agency is already obtaining an exact count of the number of marlin landed in registered tournaments.

Comment 54: NMFS received general comments regarding the recreational reporting requirements including: Non-compliance with recreational swordfish and billfish reporting occurs because it takes too much time to report fish to NMFS using the telephone. NMFS needs to simplify the telephone reporting system and increase Customer Service; to increase compliance with recreational reporting requirements, NMFS should provide a bumper sticker, or token reward, to those fishermen that have reported their catch. This technique has been successful in other fisheries.

Response: The recreational billfish and swordfish telephone reporting system has recently been modified to provide quicker and more convenient access. HMS Angling category permit holders (or their designees) must report landings of these species within 24 hours of landing by calling 800–894–5528, and then pushing the numbers ''21'' to provide information regarding the catch. A representative from NMFS will later contact the permit holder (or designee) to verify the landing and provide a confirmation number. The initial telephone call should only take a few minutes. Since the system has been modified to provide quicker access, the number of first-time callers has increased. Additionally, NMFS is working on implementing an Internet reporting system for these species. The Agency appreciates suggestions to increase compliance with the mandatory recreational reporting requirement and will consider these in the future, if necessary.

Comment 55: Until NMFS seriously invests in comparable permitting, reporting, monitoring, and enforcement across all HMS fisheries, commercial and recreational, it will not be able to appropriately manage Atlantic HMS fisheries. Currently, NMFS has adequate data for only a couple of commercial fisheries.

Response: NMFS realizes the importance of permitting, reporting, monitoring, and enforcement in maintaining viable management of Atlantic HMS. There are several measures included in this rulemaking that address these issues. Quality stock assessments, accurate quota monitoring, fishing effort control, and complying with current HMS regulations are paramount to the HMS management program and the Agency agrees that these programs are worth serious investments of personnel and financial resources. The Agency currently maintains a comprehensive permitting system for both commercial and recreational fisheries, including both limited and open access regimes. Reporting is required of all shark and swordfish commercial fisheries participants, and some commercial tuna fishery participants, including costs and earnings reports from selected commercial fisheries participants. Landings are monitored consistently to ensure that landings are within their allotted quotas. Recreational reporting is currently required for all non-tournament landings of bluefin tuna, swordfish, and billfish. Tournaments are also required to register and report any landings of HMS. NMFS is dependant on several entities for dockside and at-sea enforcement, including NMFS Office of Law Enforcement, the United States Coast Guard, and individual states that maintain a Joint Enforcement Agreement with NMFS. NMFS is involved in activities to enhance, update, and/or modify the permitting, reporting, monitoring, and enforcement systems currently in place.

Comment 56: NMFS received comments pertaining to the longline sector of the HMS fishery. The comments consisted of: NMFS must monitor and account for all sources of fishing mortality, not just mortality from the PLL fleet; and, is the VMS requirement meeting its intended purpose and who needs to possess one?; and, NMFS should put 100 percent observer coverage on commercial vessels around Puerto Rico for a few years due to gear conflicts between PLL vessels and other commercial vessels. These conflicts are attributed to PLL vessels operating closer to shore and thus interfering with traditional trolling practices.

Response: NMFS accounts for recreational landings in stock assessments and uses the best available science regarding post-release mortality of billfish in the recreational sector to consider impacts on billfish and other HMS taken in fisheries other than commercial longlining. VMS is required on all vessels fishing for HMS with pelagic longline gear onboard, on all directed shark bottom longline vessels between 33° North and 36°30′ North from January through July, and on all gillnet vessels with a directed shark permit during the Right Whale Calving Season from November 15 to March 31. VMS is meeting its intended purpose by

assisting in the monitoring and enforcement of closed areas. It is one of several tools including logbooks, observer programs, gear requirements, quotas, and limited access permits that NMFS uses to manage HMS fisheries. Resources for observer programs are limited, and having 100 percent observer coverage on commercial vessels around Puerto Rico would likely not be possible due to funding constraints. Currently, vessels are randomly selected for observer coverage throughout the fishery based on having a permit and reporting in logbooks. Furthermore, observers are not trained as enforcement personnel, and would not be in a position to reduce conflicts between different gear sectors in and around Puerto Rico. These types of issues are more appropriately handled by enforcement personnel.

Comment 57: NMFS received a number of comments regarding the deployment of observers in HMS fisheries. These comments consisted of: Observer coverage on the pelagic longline fishery must be significantly increased from current levels, especially in areas with high levels of sea turtle take (e.g., the Northeast Distant and the Gulf of Mexico). More coverage is essential to provide data on the effectiveness of the gear and bait modifications and the rate and location of sea turtle capture. The 2004 BiOp required 8 percent coverage but this increase was established by ICCAT for the purpose of assessing the bycatch of tuna species and will not be effective at assessing the bycatch of rarely encountered species such as sea turtles; proper measurement for observer coverage levels should be based on the number of observed hooks out of the number of hooks reported to have been fished, rather than number of observed sets; a voluntary HMS CHB observer program should be tested; and, NMFS should implement electronic reporting and mandatory observer coverage for all HMS fisheries.

Response: NMFS increased observer coverage in the pelagic longline fishery to 8 percent in 2004 in order to effectively monitor bycatch after implementation of new gear requirements. The pelagic longline observer program coverage level was raised to 8 percent not just to meet ICCAT targets, but also to improve the precision of catch and bycatch estimates specified in NMFS' guidelines for fisheries observer coverage levels. The number of sets is the standard effort used by other NMFS-managed fisheries in calculating the level of observer coverage required. Additionally, the set location is more easily tracked to the statistical reporting areas in the Atlantic than logbook or fishing effort based on the number of hooks would be. NMFS agrees that voluntary observer coverage would be helpful in a number of different fisheries, as would electronic reporting if it were technologically feasible and not cost prohibitive. NMFS will continue to explore these options in the future.

Comment 58: An operator's permit should be required for all HMS fisheries.

Response: The HMS Management Division is aware of several other federally managed fisheries that have imposed this requirement (e.g., the commercial and charter/headboat Atlantic dolphin and wahoo fisheries and the commercial South Atlantic rock shrimp fishery), however, NMFS has not proposed similar measures for HMS at this time. NMFS is looking at the permitting requirements for all HMS fisheries and may be consider this requirement in the future, as necessary and appropriate.

ix. Enforcement

Comment 59: NMFS received several comments related to the lack of enforcement of HMS regulations, including: the Agency needs to enforce the HMS regulations for all people fishing for HMS, there is virtually no fisheries enforcement in the U.S. Virgin Islands, lack of enforcement is a big problem in Puerto Rico, law enforcement should increase effort around places where marlin are sold illegally and there are many issues with billfish landings in Puerto Rico and there should be continued focused efforts to better understand how many billfish are being landed in the Caribbean.

Response: NMFS Office for Law Enforcement (NMFS OLE) has Special Agents stationed in Puerto Rico to enforce all federal fisheries laws, including those involving HMS. In addition, the United States Coast Guard (USCG) conducts fisheries enforcement in all federal waters, including the waters off the coast of Puerto Rico. With regard to the specific concerns that the commenter raised about billfish, NMFS has very little hard data on the extent of illegal sales of billfish in Puerto Rico, and as such cannot verify the veracity of the commenter's claims or assess their impact. NMFS has received a number of anecdotal reports of sales of Atlantic marlin in Puerto Rico. The number of these anecdotal reports suggests that a sizable number of Atlantic marlin may be illegally sold and implies that more than just those fish that come to the boat dead are illegally entered into commerce. NMFS acknowledges that there is some uncertainty associated with marlin landings statistics from the U.S. Caribbean, and the Agency is working to improve these statistics by increasing enforcement of existing permitting and reporting requirements, including those for tournaments.

Comment 60: One commenter was confused by the 3 and 12 mile limits, other confusing rules, and whom they should call to complain and ask for patrols.

Response: Most states on the Atlantic Ocean, with the exception of Texas and the west coast of Florida, have a 3 mile limit which delineates their states' waters. Individual states (or commonwealths) have jurisdiction over fisheries management and enforcement in their waters. The west (Gulf of Mexico) coast of Florida and Texas have jurisdiction out to nine miles. Puerto Rico, a U.S. Territory, has jurisdiction out to nine miles. The 2005 Guide for Complying With the Regulations for Atlantic Tunas, Swordfish, Sharks, and Billfish provides detailed information and responses to frequently asked questions concerning HMS regulations. The contact numbers for NMFS Office of Law Enforcement are also provided in this document which can be downloaded from the HMS website or by contacting NMFS.

Comment 61: NMFS must do a better job in protecting and preserving our marine resources in general. Possible strategies that NMFS should consider include: discouraging overfishing by increasing fees, implementing stricter regulations, and improving enforcement.

Response: NMFS has implemented numerous regulations that are intended to prevent overfishing, rebuild overfished stocks, reduce bycatch, and limit fishing capacity in efforts to ensure that viable stocks of HMS are enjoyed by future generations of stakeholders. Enforcement of HMS regulations is one of several priorities shared by the NMFS OLE, USCG, and states that have a Joint Enforcement Agreement with the Federal government. NMFS OLE, USCG, and individual states are constantly striving to improve enforcement of not just HMS regulations, but regulations pertaining to all fisheries. This rulemaking includes regulations aimed at rebuilding overfished stocks of billfish, preventing overfishing of finetooth sharks, reducing post release mortality of sea turtles and other protected resources, simplifying management of bluefin tuna, authorizing additional fishing gears for HMS, and improving identification of

sharks by dealers, among other measures. Increasing fees was not analyzed in this rulemaking, however, NMFS has implemented a suite of other regulations, in this rulemaking and otherwise, that prevent or discourage overfishing.

Comment 62: Possession of HMS angling permits in South Florida is still an issue. Many anglers do not possess the appropriate permit. Could the Sun Sentinel or Miami Herald be involved in reporting cases where anglers are caught for fishing without the proper permits?

Response: NMFS agrees that it is important for all participants in HMS fisheries to possess the appropriate permit and is interested in exploring options to improve outreach in all areas of the Atlantic with the objective of increased compliance with HMS permitting requirements. Advertising the requirements in newspapers or other media may be a viable option to improve compliance. However, individuals have the primary responsibility for knowing the laws surrounding their participation in all activities, including the pursuit of HMS. Many freshwater, estuarine, and/or marine fisheries require compliance with regulations that include, but are not limited to: permitting, size and bag limits, and seasons. HMS fisheries are no exception.

Comment 63: NMFS OLE needs to prioritize which violations are the most significant and pursue these cases first.

Response: NMFS OLE, in conjunction with the NMFS Regional Administrator, sets regional enforcement priorities. These priorities are based on the threat that a certain violation or category of violations presents to marine resources, identified trends in noncompliance, as well as other factors. In addition, the Magnuson-Stevens Act, as well as the Agency's own civil monetary penalty schedule, provides that the egregiousness of the offense and the violator's history of prior violations is considered, along with other factors, in determining the appropriate civil monetary penalty.

x. ICCAT

Comment 64: NMFS received a number of comments pertaining to ICCAT, the 250 recreationally caught marlin landing limit, U.S. participation at ICCAT, and U.S. negotiating positions at ICCAT, including: ICCAT should look at a longer billfish time series so they can see the increase in biomass overtime; the bargaining power of the U.S. may be reduced at ICCAT if the full quota is not being utilized; the U.S. impact on Atlantic blue and white marlin is probably considerably less than 5 percent. The White Marlin Status Review Team noted that if the United States were to stop all commercial and recreational fishing mortality for white marlin, the impact on the stock trajectory would be minimal. The U.S. cannot have a meaningful impact acting alone. ICCAT does not give credit for unilateral conservation measures. If the U.S. implements the selected alternatives measures now, we will greatly reduce our ability to negotiate with other nations to further reduce their impacts on these overfished stocks; we do not favor additional domestic regulations on catches of marlin until after further development of a rebuilding plan by ICCAT; we would be better off if NMFS waited until the other countries reduced their commercial landing by 50 percent before we agree to the 250. We would like to see verification of the 50 percent and 66 percent landing reductions that other countries have agreed to; United States ICCAT representatives should demand the unjustified 250 marlin limit be remanded. Particularly, when across the ocean, foreign longliners harvest these species for sale, with no thought of conservation; if NMFS wants angler support of recreational limits, they need to prove to recreational anglers that the U.S. will take a tougher stand at ICCAT; ICCAT may not be enough to deal with global conservation concerns relating to billfish; more pressure needs to be applied on countries that are not complying with ICCAT recommendations; the U.S. should reconsider how we participate in the ICCAT process due to its effectiveness and the inability to get other member nations to comply with recommendations; and, NMFS must strengthen its ability to establish responsible fishing practices in other countries and protect this global resource.

Response: Contrary to the assertion that an examination of data over a longer time series would reveal an increase in billfish biomass over time, an examination of Atlantic billfish biomass, catch, CPUE, and fishing mortality rate data back to the late 1950s shows an even more extreme decline in biomass than an examination of more recent time series. To use Atlantic blue marlin as an example, biomass of Atlantic blue marlin was an estimated 200 percent of MSY in the late 1950s and declined to just 40 percent of MSY by 2000. CPUE during the same period fell by more than 80 percent and total Atlantic catches of blue marlin fell from approximately 9,000 mt to just over 2,000 mt. These dramatic declines were accompanied by similarly large increases in the fishing mortality rate, which rose from less than 0.3 to approximately 4.0.

Based on SCRS data, catches of U.S. flagged vessels represent 4.5 percent of catches reported to ICCAT. U.S. action alone is not sufficient to fully recover stocks of Atlantic billfish, and reductions in catches, landings, and post-release mortalities from the pelagic longline and recreational fisheries, at both the international and domestic levels, are essential to the recovery of the Atlantic billfish. Appropriate domestic management measures, including implementation of circle hook requirements and ICCAT recommendations, as contained in this final rule, among others, can and should be implemented at this time.

The 250 marlin landing limit was contained in an ICCAT recommendation (00–13) championed by the U.S., supported by the U.S. recreational, commercial, and government ICCAT commissioners, and adopted by ICCAT. Recommendation 00–13 established a number of additional stringent conservation measures on other nations to improve the stock status of Atlantic marlin, including mandatory reductions in landings of blue and white marlin by 50 percent and 67 percent, respectively, among others. For the period 2001 through 2004, the U.S. has averaged 189 recreationally landed marlins, or approximately 75 percent of the landing limit each year. In two of those four years, the U.S. was more than 100 marlin, or the equivalent of more than 40 percent, below the U.S. landing limit, and U.S. fishermen are free to practice catch and release fishing, which is the dominant practice in the fishery by choice. The U.S. has championed, and will continue to champion, billfish conservation internationally.

Comment 65: The biggest threat to Atlantic billfish is illegal, unregulated, and unreported (IUU) fishing activities by foreign longline vessels. ICCAT nations must agree to eliminate these activities. No further restrictions should be placed upon U.S. recreational billfish fishermen until the problems associated with IUU fishing are addressed, and a further reduction in bycatch by legitimate longline vessels is achieved.

Response: IUU fishing represents a threat to the health of Atlantic billfish populations, and as such, the U.S. continues to work through ICCAT to address this issue as rapidly and efficiently as possible. Reductions in bycatch and bycatch mortality from the pelagic longline and recreational fisheries, at both the international and domestic levels, are essential to the

recovery of the Atlantic billfish. Further, there are appropriate domestic management measures, including implementation of circle hook requirements and ICCAT recommendations, as per the selected alternatives in this final rule, among others, that can and should be implemented while concurrently working to end IUU fishing at the international level.

Comment 66: To reduce billfish mortality, commenters suggested consideration or adoption of a number of international positions and trade restrictive actions by the U.S. including: imposition of trade penalties and tariffs on other countries that do not adhere to ICCAT billfish recommendations; initiating action at ICCAT to stop longlining worldwide; prohibition of all longlining in the U.S. immediately; and, prohibiting the importation of any fish from other countries whose vessels deploy longlines, do not adhere to ICCAT quotas, and do not require circle hooks on longlines.

Response: NMFS has imposed import restrictions on swordfish below the ICCAT minimum size, and may consider imposing future trade restrictions on any ICCAT species, in accordance with adopted ICCAT recommendations to impose trade restrictions. Multilateral trade restrictions, such as ICCAT recommendations, are an effective tool for addressing nations whose vessels fish in a manner that undermines the effectiveness of ICCAT conservation and management measures. Pelagic longline gear is the predominant gear type for harvesting highly migratory species and, with application of appropriate management measures, can provide for the sustainable harvest of fisheries resources in many instances. As described in the response to comments related to alternative B7, NMFS is not convinced that an international or domestic prohibition on pelagic longline fishing is necessary at this time.

Comment 67: NMFS should not implement any additional management measures on billfish until after the ICCAT meeting following the next assessments of blue and white marlin; I support alternative E1 (no action) because I disagree that we need to put more regulations on US fishermen. Our State Department needs to be listening to the U.S., but they do not care that they are putting U.S. fishermen out of business. What the U.S. cares about is leading by example without compliance. The U.S. still does not take international compliance at ICCAT seriously. The U.S. should say that it would not do anything to domestic fishermen unless we see better international compliance through ICCAT. Why is NMFS in such a hurry to put more regulations on U.S. fishermen?

Response: Reductions in bycatch and bycatch mortality from the pelagic longline and recreational fisheries, at both the international and domestic levels, are essential to the recovery of the Atlantic billfish. There are appropriate domestic management measures, including implementation of circle hook requirements and ICCAT recommendations, as contained in this final rule, among others, that can and should be implemented while concurrently working with the international community to improve management and compliance with existing ICCAT recommendations. The U.S. takes compliance issues at ICCAT very seriously and has led efforts at ICCAT to improve compliance at every available opportunity. The U.S. has been the driving force behind most measures at ICCAT that have resulted in improved compliance with management recommendations and data collection requirements.

Changes from the Proposed Rule (August 19, 2005; 70 FR 48804)

In addition to the correct of minor edits throughout, NMFS has made several changes to the proposed rule for management measures related to the workshops, the directed billfish fishery, the BFT fishery, authorized fishing gears, and regulatory housekeeping issues. These changes are outlined below.

1. In § 635.2, the definition of ''Atlantic HMS identification workshop certificate'' was added to the regulatory text in the proposed rule. The final rule changes the certificate name to ''Atlantic shark identification workshop certificate'' to better reflect the curriculum for these workshops. The name of the protected species workshop certificate was also modified to protected species safe handling, release, and identification workshop certificate in order to more accurately reflect the workshop objectives.

2. At § 635.4(l)(1), the final rule was modified to include language regarding the requirement to obtain the appropriate workshop certificate before transferring permits from one entity to another. The change was made because the applicant must submit proof of workshop certification with the application for a shark or swordfish limited access permit. This modification will ensure that the owner is familiar with the proper safe handling, release, and identification techniques upon entering into and prior to actively participating the fishery.

3. In § 635.8(a)(1), the January 1, 2007, deadline for owners and operators of vessels that fish with pelagic and bottom longline and gillnet gear was changed to require the owners and operators of such vessels to possess a workshop certificate prior to renewing their commercial shark or swordfish Federal limited access permits in 2007. The rolling deadline distributes workshop attendance throughout the year, facilitating the implementation and administration of these workshops. With attendance likely to be more evenly distributed, owners and operators are expected to get more hands on practice with the tools and techniques for safe handling and release of protected species. The delayed deadline gives participants the opportunity to attend the workshop most convenient for them.

4. The final rule was modified to allow NMFS to issue a certificate to any person who has completed the workshop. The reference to permitted entity in § 635.8(a)(2) and permitted entity and proxy in § 635.8(b)(2) were removed. Removing the term ''permitted'' allows individuals, who are not permitted to participate in any of the HMS fisheries, to receive the workshop certification (i.e., law enforcement, port agents, anglers, etc.). Some permit holders are corporations or companies; therefore the term ''person'' refers to individuals as well as corporations or companies. Section 3 of the Magnuson-Stevens Act defines a ''person'' as: ''any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.''

5. In § 635.8(b)(1), the deadline for shark dealers to obtain an Atlantic shark identification workshop certificate changed from January 1, 2007, to December 31, 2007, to provide NMFS with more time to develop the workshop curriculum and materials, as well as certify all of the shark dealers or their proxies. The delayed deadline gives participants the opportunity to attend the workshop most convenient for them.

6. The final rule clarifies that if a shark dealer sends a proxy rather than personally attending an Atlantic shark identification workshop, a workshop certificate for each proxy representing each place of business listed under the shark dealer permit must be submitted

with the shark dealer permit renewal application pursuant to § 635.8(b)(5) and (c)(4). Copies of each proxy's workshop certificate is proof that an individual from each place of business, authorized to receive, purchase, trade, or barter for Atlantic shark under the dealer's permit, has attended an Atlantic shark identification workshop and is certified in the techniques for identifying sharks to the species level in whole and log form.

7. In § 635.8(c)(1), NMFS requires workshop certificates to be renewed three years from the expiration date printed on the certificate, rather than prior to the date of issuance as proposed. The certificate will be used as the individual's proof of attending a workshop and obtaining certification; therefore the expiration date printed on the certificate will facilitate monitoring and compliance as the deadline for permit renewal will coincide with the workshop certification renewal. Individuals, who are grandfathered into the workshop requirements, will also be held to the same three year renewal requirement as those attending a workshop for the first time in 2007.

8. The final rule at § 635.8(c)(7) includes a new requirement for anyone required to attend the protected species safe handling, release, and identification workshop or the Atlantic shark identification workshop. The requirement calls for mandatory workshop attendees to show a copy of their HMS permit as well as proof of identification. This additional requirement ensures that the permit holder and the individual attending the workshop are the same person. In the case where the permit holder is a company, corporation, partnership, or some other type of entity, the individual attending on behalf of the permit holder must show proof that the permit holder acknowledges the individual as their agent, and they must show a copy of the HMS permit. For proxies attending on behalf of a shark dealer permit holder, the proxy must have documentation from the dealer acknowledging that the proxy is attending on behalf of the Atlantic shark dealer permit holder.

9. In the final rule, at § § 635.5(c)(2); 635.20(d)(2) and (d)(4); 635.21(e)(i); 635.22(b); 635.30(b); and, 635.71(c)(9) text prohibiting the take, retention, and possession of Atlantic white marlin from January 1, 2007, through December 31, 2011, inclusive, was deleted. Elimination of this text reflects the Agency's decision not to adopt this alternative, at this time, based on public comment in opposition to the proposal, limited ecological gains relative to potential economic costs, the upcoming stock assessments for Atlantic white marlin, and upcoming international negotiations on the current ICCAT rebuilding plan.

10. In the final rule at § 635.20(d)(4) and § 635.27(d)(3), the minimum delay in effective date for in-season minimum size increases and/or an in-season shift to catch and release only fishing for Atlantic blue and white marlin was modified from 5 days to 14 calendar-days based on public comment asking for additional time and reconsideration of the estimated time necessary to collect and analyze landings information and project the date at which regulatory action may become necessary.

11. In the final rule, an effective date of January 1, 2007, was added to § 635.21(e)(2)(iii) to clarify when billfish tournament anglers would be subject to circle hook requirements.

12. Text was added to § 635.21 (e)(2)(iii) and § 635.71 (c)(7) to clarify which tournament anglers would be subject to circle hook requirements. This change was made to better inform the public and facilitate enforcement.

13. In the final rule at § 635.27(d)(1), reasons and mechanisms for potential adjustment of the annual U.S. Atlantic marlin landings limit were identified to provide the public a clearer understanding of circumstances and processes under and by which the annual U.S. marlin landings limit may be altered.

14. In the final rule § 635.27(d)(1) and (2) were amended to clarify that NMFS will not produce or publish annual marlin landings limit specifications at the start of each season. The final rule clarifies that NMFS will only produce and publish annual marlin landing limit specifications when carryover of underharvest or overharvest, or a subsequent ICCAT recommendation, alters the U.S. Atlantic marlin landings limit from 250 fish. This change was made to streamline the management process, similar to the process used for other HMS.

15. In the final rule at § 635.27(d)(2), variables identified as those which would be considered when determining potential adjustments to the annual landing limit of 250 recreationally caught Atlantic marlin were modified. The proposed rule mistakenly contained variables appropriate for consideration of in-season adjustments to marlin minimum sizes and/or a shift to catch and release only fishing for Atlantic marlin, but not for adjustment of the annual 250 Atlantic marlin landing limit. The inappropriate variables were removed.

16. In the final rule, text at § 635.27(d)(3) was added to clarify the variables that will be considered when the Agency is making a determination of whether or not to implement an in-season shift to catch and release only fishing for Atlantic blue and white marlin.

17. In the final rule, text at § 635.71(c)(8) was amended to clearly articulate when it is illegal to take, retain, or possess Atlantic blue or white marlin.

18. The proposed alternative in the Draft Consolidated HMS FMP regarding the retention of the North/South Angling category dividing line was changed in the Final Consolidated HMS FMP. As a result, the regulatory text contained in § 635.27(a)(2) has been modified to maintain the North/South Angling category dividing line located at 39°18′ N. latitude (Great Egg Inlet, NJ). This dividing line is intended to provide a more equitable geographic and temporal distribution of recreational fishing opportunities by separating each BFT size-class subquota into two geographical regions, the northern area (allocated 47.2 percent of the size-class subquotas) and the southern area (52.8 percent of the size-class subquotas). This management tool was originally intended to ensure reasonable recreational fishing opportunities in all geographic areas without risking overharvest of the Angling category quota. While this line allows NMFS to allocate different retention limits based on the migratory pattern of BFT, the effectiveness of this management tool depends on NMFS gathering recreational BFT landings information in a timely fashion to support real-time management decisions.

19. A typographical error in § 635.27(a)(7)(ii) is also corrected in this final action. The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is equal to 18.5 percent of the total school BFT quota for the Angling category. In the proposed rule, the metric ton equivalent to this calculation was published as 36.6 mt, this was in error and is corrected to the actual amount of 22.0 mt.

20. In the List of Fisheries (LOF) at § 600.725(v), under IX, Secretary of Commerce (H), has been modified to combine the Atlantic Tunas, Swordfish, and Shark FMP with the Atlantic Billfish FMP, consistent with the consolidation of those FMPs in this final rule. The LOF was also modified to limit the use of speargun fishing gear to BAYS tunas only. The modification to exclude BFT from the allowed list of

target species for this new gear type was made because of the declining performance of the existing BFT fishery, recent quota limited situations within the recreational angling sector, and ongoing concerns over the status of the stock. The LOF was further modified to clarify, consistent with existing regulations at § 635.21(e)(4)(iv), the authorized gears for the recreational swordfish fishery. Finally, in the final rule, green-stick was removed from the tuna handgear fishery in the LOF, as further described in item 25 below.

21. In § 635.21(e)(1)(i) and (ii), the authorized gear section for Atlantic tunas Angling and Charter/Headboat categories, the use of speargun fishing gear for Atlantic tunas has been restricted to the recreational BAYS tuna fishery only. The proposed rule was modified to exclude BFT from the list of allowable tuna species due to declining performance of the existing BFT fishery, recent quota limited situations within the recreational angling sector, and ongoing concerns over the status of the stock.

22. In § 635.21(f), the gear operation and deployment restrictions section for speargun fishing gear, the proposed rule has been amended to include, consistent with the changes in item 21 above, a restriction which limits the use of speargun fishing gear to the recreational BAYS tuna fishery only. Additionally, the regulatory text has been clarified to state that persons authorized to fish for Atlantic BAYS tunas with speargun gear must be physically in the water when the speargun is fired or discharged, given that the speargun does not use an explosive device.

23. In the final rule, at § 635.31(a)(1), the ability to sell tunas harvested with speargun gear has been modified. The proposed rule would have allowed the sale of speared BAYS tunas from HMS Charter/Headboat category vessels, subject to applicable limits, and would not have allowed the sale of large medium or giant BFT taken with speargun fishing gear at § 635.31(a)(1). In the final rule, § 635.31(a)(1) has been modified to state specifically that persons may not sell or purchase Atlantic tunas, BAYS or BFT, harvested with speargun fishing gear. This modification clarifies that authorizing this gear type for recreational speargun fishermen allows them the opportunity to use speargun fishing gear to target BAYS tunas only, recreationally.

24. To reinforce speargun fishing gear operation and deployment restrictions at § 635.21(f) and restrictions on sale and purchase at § 635.31(a)(1), additional prohibitions have been added at § 635.71(b). Under this section, it is unlawful for any person or vessel subject to the jurisdiction of the United States to: fish for any HMS, other than Atlantic BAYS tunas, with speargun fishing gear; sell, purchase, barter for, or trade for an Atlantic BAYS tuna harvested with speargun fishing gear; fire or discharge speargun gear without being physically in the water; use speargun gear to harvest a BAYS tuna restricted by fishing lines or other means; or, use speargun gear to fish for BAYS tunas from a vessel that does not possess a valid HMS Angling or Charter/Headboat permit.

25. Based on public comments, as described in the Response to Comments section of the preamble, NMFS has determined to clarify the currently allowed use of the green-stick gear rather than proceed with authorization and definition of the gear-type in a manner that may further add to confusion and have unintended negative consequences to fishery resources and participants. Accordingly, all references to green-stick gear that were contained in the proposed rule have been removed. These references were contained in the LOF at § 600.725(v), and in the HMS regulations at § 635.2, § 635.21(e)(1), § 635.21(e)(1)(ii) and (iii), and § 635.31(a)(1).

26. In § 635.2, the definition of buoy gear has been modified. In the proposed rule, this definition contained language restricting the gear operation and deployment. This regulatory text has been removed from the definition of buoy gear and has been moved to the gear operation and deployment restrictions at § 635.21(e)(4)(iii). Additionally, NMFS has altered the definition of buoy gear in the final rule in response to public comment. The proposed rule limited fishermen utilizing buoy gear to deploying only one buoy per individual buoy gear. The final rule allows the use of more than one floatation device per gear and allows fishermen to configure the gear differently depending on vessel and crew capabilities, or weather and sea conditions. In the final rule, buoy gear is defined as a fishing gear consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached.

27. In § 635.2, a definition of ''floatation device'' has been added to clarify the intent of the buoy gear definition at § 635.2 and the gear operation and deployment restrictions at § 635.21(e)(4)(iii). Further, this definition is responsive to public comment and better reflects the operational reality of this fishery. The inclusion of this definition rectifies potential problems in enforcing the float restriction in the proposed rule.

28. In § 635.6(c)(1) and (2), buoy gear has been added to the list of gears for which there are specific gear marking requirements.

29. In § 635.21(e)(4)(iii), the gear operation and deployment restrictions for buoy gear have been modified to require that vessels utilizing buoy gear may not possess or deploy more than 35 floatation devices and to clarify the original intent of the proposed rule. The proposed rule stated that vessels may not possess or deploy more than 35 individual buoys per vessel. This modification was made to allow for additional flexibility in constructing and deploying this gear type, as discussed in item 26 above. The additional restrictions added to clarify the intent of the rule include: buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline; floatation devices may be attached to one, but not both ends of the mainline, and no hooks or gangions may be attached to any floatation device or horizontal portion of the mainline; if more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them; individual buoy gears may not be linked, clipped, or connected together in any way; and, if a gear monitoring device is positively buoyant and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

30. To reinforce buoy gear operation and deployment restrictions at § 635.21(e)(4)(iii), prohibitions have been added at § 635.71(e). Under this section, it is unlawful for any person or vessel subject to the jurisdiction of the U.S. to: fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, buoy gear as defined at § 635.2, unless the vessel owner has been issued a swordfish directed LAP or a swordfish handgear LAP in accordance with § 635.4(f); as the owner of a vessel permitted, or required to be permitted, in the swordfish directed or a swordfish handgear LAP category, and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(e)(4)(iii); fail to mark each buoy gear as required at § 635.6(c); possess any HMS, other than Atlantic swordfish, harvested with buoy gear; or, fail to

construct, deploy, or retrieve buoy gear as specified at § 635.21(e)(4)(iii).

31. In addition to the restrictions set forth in the proposed rule at § 635.21(b), the regulatory text has been modified to state that no person may use secondary gears to capture, or attempt to capture, free-swimming or undersized HMS. This language was modified to differentiate between primary and secondary gears.

32. In § 635.71(a), the general prohibitions section, a prohibition has been added to reinforce the general gear operation and deployment restrictions at § 635.21(b). The prohibition in the final rule states that, it is unlawful for any person or vessel subject to the jurisdiction of the U.S. to utilize secondary gears to capture, or attempt to capture, any undersized or free-swimming HMS, or fail to release a captured HMS as specified at § 635.21(a).

33. In the proposed rule, NMFS added regulatory text at § 635.5(a)(1) specifying that the annual ''cost-earnings'' reporting form from selected vessels was to be submitted by January 31 of the following year. In the final rule, the regulatory text has been clarified and changed to specify that the ''Annual Expenditures'' reporting form from selected vessels is required to be submitted by the date specified on the form. The date currently specified on the form is January 31 of the following year, but this modification will allow NMFS to change the date on the form through a revision to the Paperwork Reduction Act submission without conducting a separate rulemaking to change the regulatory text. NMFS is considering, based on public comment, modifying the date to April 15 of the following year to coincide with Federal tax return submission deadlines. NMFS has clarified the title of the form to more accurately reflect its actual title.

34. In the proposed rule, the regulatory text at § 635.5(c)(2) would be modified to indicate that vessel owners, rather than anglers, are required to report all non-tournament recreational landings of Atlantic billfish and North Atlantic swordfish to NMFS. Based upon public comment indicating that some vessel owners may be absent while having another captain operate the vessel, the regulation in the final rule has been modified to indicate that vessel owners, or their designee, are required to report non-tournament recreational landings of these species to NMFS. The vessel owner would still be responsible for reporting, but the owner's designee could fulfill the requirement.

35. The proposed rule at § 635.21(c)(1)(i) and (d)(4)(i) stated that the percent of pelagic species that bottom longline vessels could possess in PLL closed areas was to be measured relative to the weight of demersal species possessed or landed, and that the percent of demersal species that pelagic longline vessels could possess in BLL closed areas was to be measured relative to the weight of pelagic species possessed or landed, respectively. In the final rule, at § 635.21(c)(1) and (d)(4), this procedure is corrected and clarified to indicate that the percent of either type of species is to be measured relative to the total weight of all indicator species that are listed in Tables 2 and 3 of Appendix A to part 635.

36. The proposed rule at § 635.21(c)(1)(ii) and (d)(4)(ii) would have established an upper and lower limit on the number of commercial fishing floats that bottom and pelagic longline vessels, respectively, could possess or deploy if fishing in an HMS closed area. Based upon public comment indicating that this measure could severely reduce the operational flexibility of longline vessels, and consultations with NMFS Office of Law Enforcement indicating that the proposed regulation was impractical, NMFS has decided to remove this measure from the final regulations.

37. In the Draft Consolidated HMS FMP, NMFS preferred alternative I10(b), which would have amended the regulatory text to clarify that carry-over provisions would apply to the NED set-aside. However, after subsequent analysis of the ICCAT recommendation and in response to comments seeking clarification, the Agency determined that the ICCAT recommendation provides the flexibility to avoid any potential negative environmental impacts associated with this alternative. Therefore, alternative I10(c) is the final alternative in the Final Consolidated HMS FMP. Under this alternative, NMFS will conduct additional discussions at ICCAT regarding the long-term implications of allowing unused BFT quota from the previous year to be added to the subsequent year's allocation. Depending upon the results of these discussions, the regulations and operational procedures may need to be further amended in the future. In the interim, NMFS will maintain the proposed regulatory text at § 635.27(a)(3) and § 635.23(f)(3), as it meets the objectives being addressed regarding this issue, but will amend the practice of allowing under/overharvest of this set-aside allocation to be rolled into, or deducted from, the subsequent fishing year's set-aside allocation.

38. NMFS has modified the proposed list of demersal ''indicator'' species in Table 3 of Appendix A to part 635 by removing silky sharks and three species of hammerhead sharks from the final list, because these species could potentially be caught on both pelagic and bottom longlines. Also, three species of tilefish are added to the final list of demersal ''indicator'' species, because these species are indicative of bottom longline fishing activity and based upon public comment.

39. In the final rule, NMFS modified the name of the FMP in § 635.34(b) to reflect the consolidation of the two previous FMPs into one.

Agency Decision on the Blue Ocean Institute's Petition for Rulemaking to Close an Area of the Gulf of Mexico from April through June

One of the Gulf of Mexico time/area closure alternatives that NMFS considered was suggested in a petition for rulemaking from Blue Ocean Institute et al. This alternative was suggested as a means of protecting western Atlantic BFT that return to the Gulf of Mexico to spawn. This alternative would prohibit the use of pelagic longline gear in HMS fisheries in a putative BFT spawning area from April through June (101,670 nm^2; 3 months). Assuming no redistribution of effort (i.e., all affected vessels no longer fish with pelagic longline), the logbook data indicated that this alternative would potentially reduce bycatch of all of the species being considered from a minimum of 0.8 percent for pelagic sharks to a maximum 21.5 percent for BFT. However, assuming that effort is redistributed to open areas (i.e., all affected vessels fish with pelagic longline in open areas), bycatch was predicted to increase for all species except leatherback and other sea turtles. Even BFT discards, which showed a fairly dramatic decline without redistribution of effort, were predicted to increase by 9.8 percent with redistribution of effort. The apparent increase in predicted BFT discards with redistribution of effort was likely due to the fact that BFT are caught in months other than April through June in the Gulf of Mexico, as well as the high number of BFT discards in other areas. This was reflected in some of the other alternatives analyzed as described in the HMS FMP. When effort was redistributed to only the open areas of the Gulf of Mexico and in an area in the Atlantic where many Gulf of Mexico vessels have reported fishing, there was a predicted decrease in bycatch of white

marlin, leatherback and other sea turtles, and pelagic shark discards, BFT discards, yellowfin tuna discards, and BAYS tuna discards. However, the analysis also predicted an increase in bycatch of blue marlin, sailfish, spearfish, and large coastal sharks.

This alternative based on the petition would potentially impact a total of 75 vessels that fished in the area from 2001 - 2003. Without redistribution of effort, this alternative would potentially result in a 13.4 percent decrease in fishing effort, and reductions in landings ranging from a minimum of 9.9 percent for incidentally-caught BFT (kept) to a maximum 27.0 percent for bigeye tuna. The total loss in revenue for this alternative, assuming no redistribution of effort, would be approximately $3,136,229 annually, or $49,003 per vessel annually. With redistribution of fishing effort, the alternative was predicted to result in a decrease in bluefin and yellowfin tuna landings of 18.3 and 11.0 percent, respectively, for estimated losses of approximately $166,040 and $1,382,042 annually. However, overall there could have been a net gain in revenues for this alternative with redistribution of effort of approximately $1,651,023 annually, or $25,797 per vessel annually. The actual ecological and economic impacts of the alternative would likely be in between no redistribution of effort and the full redistribution of effort model. As described in the Final HMS FMP and in the response to Comment 26 of the time/area section, NMFS also evaluated additional scenarios between these base scenarios when some movement is expected into a particular area (i.e., instead of being uniformly distributed to all open areas), depending on the spatial and temporal duration of the closure. For this particular alternative for the petition, in addition to the base scenarios, NMFS also evaluated the movement of fishing effort to other open areas in the Gulf of Mexico and to a specific area in the Atlantic Ocean. Due to the potential negative ecological impacts, negative economic impacts, and the increase in bycatch and discards based on the different redistribution of effort scenarios, NMFS is not selecting this alternative at this time.

In addition to the variability of impacts across species, all of the analyses, including those for the petition for rulemaking, were conducted using J-hook data. New circle hook management measures were put into place in 2004, and NMFS is still assessing the effects of circle hooks on bycatch rates for HMS. Until NMFS can better evaluate the effects of circle hooks on bycatch reduction, especially with regard to sea turtle interactions and bycatch of other non-target HMS, NMFS chooses, at this time, not to modify the current time/area closures. NMFS intends to reconsider modifications to existing closures once further analyses of circle hook data and the results of the stock assessments for blue marlin, white marlin, north and south swordfish, and eastern and western BFT become available. Pending the results of the marlin, swordfish, and BFT stock assessments, the criteria could allow for additional closures or modifications of existing closures to be considered for all HMS fisheries, including those to reduce the incidental takes of BFT.

Although NMFS is not selecting this alternative based on the petition at this time, NMFS will pursue alternatives to reduce bycatch in the Gulf of Mexico, especially for spawning BFT. NMFS has currently adopted all of the ICCAT recommendations regarding BFT, a rebuilding plan is in place domestically for this species, and NMFS has implemented measures to rebuild this overfished stock. NMFS is currently assessing different protections for different ages of BFT and how such protection will affect the BFT stock as a whole. For instance, how will protecting spawning BFT in the Gulf of Mexico help rebuild the stock if it results in increased discards of juvenile and sub-adult BFT along the U.S. east coast? NMFS needs more information to further understand how to manage this species given its complex migratory patterns, life history, and age structure. NMFS is also considering developing incentives that would dissuade fishermen from keeping incidentally caught BFT, particularly spawning BFT, in the Gulf of Mexico. This may involve research on how changes in fishing practices may help reduce bycatch of non-target species as well as the tracking of discards (dead and alive) by all gear types. In addition, NMFS is also considering the effects of sea surface temperatures in the Gulf of Mexico and its association with congregations of BFT and putative BFT spawning grounds in the Gulf of Mexico (Block, pers. comm.). NMFS intends to investigate the variability associated with sea surface temperatures as well as the temporal and spatial consistency of the association with these temperature regimes. By better understanding what influences the distribution and timing of BFT in the Gulf of Mexico, NMFS can work on developing tailored management measures over space and time to maximize ecological benefits while minimizing economic impacts, to the extent practicable.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq*. NMFS has determined that the final rule and related Final Consolidated HMS FMP are consistent with the national standards of the Magnuson-Stevens Act, other provisions of the Act, and other applicable laws.

NMFS prepared an FEIS for the Final Consolidated HMS FMP. The FEIS was filed with the EPA on July 7, 2006. A notice of availability was published on July 14, 2006 (71 FR 40096). In approving this final rule and the Final Consolidated HMS FMP, NMFS issued a ROD identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

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

This final rule contains no new collection-of-information requirements subject to review and approval by OMB under the PRA.

An informal consultation under the ESA was concluded for the Final Consolidated HMS FMP on January 25, 2006. As a result of the informal consultation, the Regional Administrator determined that fishing activities conducted under this rule are not likely to affect adversely endangered or threatened species or critical habitat. As described in the Final Consolidated HMS FMP, the final management measures are not expected to cause significant changes in fishing practices, distribution of fishing, or fishing effort. As such, reinitiation of consultation with respect to the previously concluded HMS biological opinions is not required under 50 CFR 402.16.

In addition to the impacts of the final alternatives in this document, NMFS continues to monitor impacts to protected species from the ongoing operation of HMS fisheries through various logbook and observer programs. NMFS monitors observed interactions with marine mammals and sea turtles in the pelagic longline fishery on a quarterly basis and reviews the data in conjunction with extrapolated annual take estimates for appropriate action, if any, as necessary. Should additional management measures be deemed necessary to reduce bycatch or bycatch mortality of protected species in the pelagic longline or other HMS fisheries, NMFS would take appropriate action in a separate rulemaking.

The AA has determined that this rule is consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf

of Mexico, and Caribbean that have federally approved coastal zone management programs under the Coastal Zone Management Act (CZMA). In August 2005, NMFS provided all states, Puerto Rico, and the U.S. Virgin Islands copies of the proposed rule and Draft Consolidated HMS FMP. Under 15 CFR 930.41, states have 60 days to respond after receipt of the consistency determination and supporting materials. States can request an extension of 15 days. If a response is not received within those time limits, NMFS can presume concurrence (15 CFR 930.41(a)). Eleven states replied, within the 60-day response period, that the proposed regulations were consistent, to the extent practicable, with the enforceable policies of their coastal zone management programs. The State of Georgia replied on March 1, 2006, that the proposed rule was not consistent with the enforceable policies of Georgia's coastal zone management program. NMFS notified the State of Georgia that because their response was after the 60-day response period, NMFS presumed concurrence after the end of the CZMA review period and would consider their comment as part of the public comments received on the proposed rule and Draft Consolidated HMS FMP. NMFS has presumed concurrence with the states that did not respond. NMFS will continue to work with the states to ensure consistency between state and Federal regulations.

A Summary of the Final Regulatory Flexibility Analysis

As required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the Draft Consolidated HMS FMP and its proposed rule (70 FR 48804, August 19, 2005) and prepared an FRFA for the Final Consolidated HMS FMP and this final rule. The FRFA examines the economic impacts of the management alternatives on small entities in order to determine ways to minimize economic impacts. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A summary of the information presented in the FRFA follows. Where applicable, within each section of the FRFA, the issues are addressed in the same order they were in the FEIS and in the Response to Comment section of this final rule, starting with Workshops and ending with Regulatory Housekeeping Measures. The Final Consolidated HMS FMP provides further discussion of the economic impacts of all the alternatives considered. Copies are available (see **ADDRESSES**).

Statement of the Need for and Objectives of the Final Rule

The need for and objective of the final rule are fully described in the preamble of the proposed rule (70 FR 48804, August 19, 2005) and in the Final Consolidated HMS FMP and are not repeated here (5 U.S.C. 604(a)(1)). In summary, the selected actions in this final rule will: establish mandatory workshops for commercial fishermen and shark dealers; implement complementary time/area closures in the Gulf of Mexico (GOM); implement criteria for adding new or modifying existing time/area closures; address rebuilding and overfishing of northern albacore tuna and finetooth sharks; implement recreational management measures for Atlantic billfish; modify bluefin tuna (BFT) General Category subperiod quotas and simplify the management process of BFT; change the fishing year for tunas, swordfish, and billfish to a calendar year; authorize speargun fishing gear in the recreational fishery for bigeye, albacore, yellowfin, and skipjack (BAYS) tunas; authorize buoy gear in the commercial swordfish handgear fishery; clarify the allowance of secondary gears (also known as cockpit gears); and clarify existing regulations.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

A FRFA is also required to include a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the issues raised, and a statement of any changes made in the rule as a result of the comments (5 U.S.C. 604(a)(2)). NMFS did not receive any comments specific to the IRFA but did receive many comments on the Draft Consolidated HMS FMP as a whole and the general economic impacts of the proposed regulations. All the comments received and NMFS' responses to those comments are summarized above under Response to Comments. Additionally, NMFS describes the changes to the proposed rule (some of these changes were a result of public comment) above, under Changes from the Proposed Rule. The paragraphs below summarize some of the specific economic concerns that were raised and NMFS' response.

A. Workshops

NMFS received many public comments both in support of and opposed to the protected species workshops. Some commenters were concerned about potential lost revenue on longline trips if bycatch were to be handled correctly, and recommended not limiting these workshops to longline fishermen. Some comments supported extending the workshop requirements to include all HMS fishermen, as well as expanding the release techniques to include additional species. NMFS received many comments suggesting that various combinations of owners, operators, and crew members be required to participate in the workshops. Commenters noted that if the crew members are not required to attend, then the operators should be responsible for training the crew. Several commenters opposed requiring the crew to be certified because of their transient nature and the fact that some crew members are not U.S. citizens and may not be available to attend workshops. A few commenters supported grandfathering in the industry certified individuals, so that they do not need to attend the first round of mandatory workshops (they would still need to be recertified).

This rule will require that vessel owners and operators attend the workshops. This requirement for vessel owners and operators balances the ecological need to ensure that fishermen on the vessel can use the handling and release gear appropriately and the economic costs to the fishermen to attend the workshops. While the final rule will not require crew members to attend the workshops, it is likely that operators and owners would disseminate this information to the crew in a cost effective manner. NMFS encourages all workshop participants to disseminate this information to all crew members involved with haul-back or fishing activities. This rule will also grandfather in the industry-certified individuals. While NMFS realizes that many vessel owners may not operate or be present on the vessels during fishing trips, certifying vessel owners ensures that they are aware of the certification requirements and protocols. The owners are, then, accountable for preventing their vessel from engaging in fishing activities without a certified operator on board. NMFS did not change the proposed rule as a result of these comments, but did clarify portions of the regulatory text to ensure the implementation is clear.

NMFS received several comments in support of time periods for renewal of certification that were different than the proposed alternative. NMFS is maintaining the original preferred alternative of recertification generally

every three years in order to balance the ecological benefits of maintaining familiarity with the protocols and species identification, and the economic impacts of workshop attendance due to travel costs and lost fishing opportunities.

NMFS received comments regarding the need for proxies for dealers attending shark identification workshops under alternative A9, the flexibility required in certifying newly hired proxies, and the need for multiple proxies. Alternative A9 was modified to address these comments and allow for dealer proxies. Because not all shark dealer permit holders may be onsite where vessels unload their catches, this rule will permit a local proxy to attend the workshop to obtain the proper training in species-specific shark identification, while allowing the permit holder to meet the certification requirements. Furthermore, since the actual permit holders may not be involved in fish house activities, the workshops would more effectively decrease the reporting of unknown sharks if a proxy who is directly involved with fish house activities attends and obtains the training in lieu of the permit holder. If a dealer opts to send a proxy, then the dealer would be required to designate a proxy from each place of business covered by the dealer's permit. A proxy would be a person who is employed by a place of business, covered by a dealer's permit, a primary participant in identification, weighing, or first receipt of fish as they are offloaded from a vessel, and involved in filling out dealer reports.

According to public comment, NMFS should anticipate turnover in dealer proxies. To address this, the Agency is allowing one-on-one training sessions that would accommodate the replacement of a proxy whose employment was terminated on short notice. These sessions would be at the expense of the permit holder.

Public comments were supportive of mandatory HMS identification workshops for federally permitted shark dealers, but also suggested that these workshops be available to others, such as the recreational and commercial fishery, law enforcement, port agents, and state shark dealers. While these workshops would be mandatory for federally permitted shark dealers, NMFS would try to accommodate other interested individuals when it is feasible. At well-attended workshops, those persons for whom the workshops are mandatory would be given priority in terms of hands-on instruction.

B. Time/Area Closures

NMFS also received comments on the time/area closure alternatives. A number of commenters expressed concern over the effort redistribution model used to analyze these alternatives. These commenters felt that pelagic longline vessels were not mobile enough to redistribute effort uniformly and that vessels in a certain area would move to adjacent areas (e.g., vessels homeported in the Gulf of Mexico would stay in the Gulf of Mexico and would not move into the mid-Atlantic bight). NMFS received comments that different approaches to effort redistribution should be considered, particularly for closures of bluefin tuna in spawning areas in the Gulf of Mexico. As a result, NMFS considered redistribution of effort based on an analysis of the mobility of the PLL fleet and known effort displacement currently taking place out of the Gulf of Mexico. Based on this revised approach, NMFS determined that the closures in the Gulf of Mexico could increase bycatch for some of the species being considered. Therefore, NMFS decided not to implement any new time/area closures, other than complementary closures for Madison-Swanson and Steamboat Lumps.

During the comment period, NMFS also received comments regarding a ''decision matrix'' that could help to guide the choices that NMFS would have to make between different time/area closures and different species, that NMFS should set bycatch reduction goals, and that the bycatch reduction goals of the existing closures have already been met and, therefore, the Agency should reopen portions of the current closures. As discussed in the response to Comment 20 in the Time/Area Closures section, NMFS agrees that decision matrices and bycatch reduction goals could be useful, but does not believe that NMFS could use these concepts to appropriately balance the needs of the different species involved at this time. NMFS did not change the proposed rule as a result of these comments.

C. Northern Albacore Tuna

NMFS did not receive many comments in regard to the alternatives considered for northern albacore tuna. None of the comments received were in regard to the economic impacts. NMFS did not change the preferred alternative as a result of public comment.

D. Finetooth Sharks

NMFS received a range of public comments regarding finetooth shark alternatives indicating support and opposition to Alternatives D2–D4, and additional comments, including, but not limited to: comments on gillnet fisheries in general, the use of VMS, the results of the 2002 SCS stock assessment, reporting of HMS by dealers, identification of finetooth sharks, and the accuracy of data attained from MRFSS. All of these comments were considered prior to selection of the final alternative for preventing overfishing of finetooth sharks. NMFS did not change the proposed alternative as a result of these comments. Additional measures may be necessary to prevent overfishing of finetooth sharks in the future.

E. Atlantic Billfish

NMFS received many comments regarding Atlantic billfish alternatives. NMFS received substantial public comment opposing and supporting circle hook requirements proposed under draft alternatives E2 and E3. A prevalent theme of the comments opposing mandatory circle hook use, in all or portions of the HMS and billfish recreational fisheries, was that the recreational sector has a minor impact on Atlantic billfish populations relative to the commercial pelagic longline fleet. Given the relatively small size of the U.S. domestic pelagic longline fleet and the considerable size of the recreational fishing fleet, NMFS determined that it was appropriate to examine billfish mortality from the domestic perspective in addition to working internationally through ICCAT. NMFS did not change the proposed action, alternative E3, as a result of public comment. The final action will require non-offset circle hooks at all billfish tournaments if natural or natural/artificial baits are used.

A second important theme in comments opposing mandatory circle hook use under alternatives E2 and E3 was the need for NMFS to promulgate more detailed specifications for circle hooks. NMFS is continuing to work on various definitions of circle hooks that may lead to a more refined hook definition in the future. However, NMFS finds that it is appropriate to require the use of circle hooks in portions of the recreational billfish fishery, at this time, to reduce post-release mortalities in the recreational billfish fishery.

NMFS also received comments that billfish tournament operators would need advance notice of impending circle hook regulations to allow for production of rules, advertising, and informing tournament participants of potential circle hook requirements. In response, NMFS spoke to a number of tournament

operators in the Atlantic, Gulf of Mexico and Caribbean to better understand various aspects of tournament operations, and determined that a delayed date of effectiveness of no less than six months would be necessary to minimize adverse impacts to tournament operators and participants. Significant outreach efforts have been undertaken by NMFS since the release of the FEIS in July 2006 to address the need for advanced notice. Therefore, the effective date of the requirement will be January 1, 2007. This effective date in combination with continued outreach effort by NMFS will provide billfish tournament anglers additional time to familiarize themselves and become proficient in the use of circle hooks, while allowing tournament operators to adjust tournament rules, formats, and informational materials, as appropriate, thereby minimizing any potential adverse socio-economic impacts. Additionally, given the concerns expressed from fishermen in the mid-Atlantic region since the release of the FEIS regarding this requirement, NMFS intends to work cooperatively with tournaments and anglers to research other bait and/or hook and bait combinations that would achieve the same ecological benefits.

NMFS also received public comments regarding the perceived limited ecological impact of the 250 marlin landings limit. These comments could be categorized into two opposing views that suggest two different courses of action. Some commenters suggested that the limited ecological impact was not worth any potential adverse economic impact, even a very limited one, while other commenters suggested that the U.S. must implement the 250 marlin landings limit to comply with U.S. international obligations and as part of a strategy to implement appropriate measures to help limit billfish mortality. Related to these comments, NMFS received suggestions recommending that the Agency automatically carry forward any underharvest to the following management period. Given that the known level of U.S. recreational marlin landings has been within the 250 fish limit for three of the four reported years, and that the 2002 overharvest was offset by the 2001 underharvest, the ecological benefits of this alternative are likely limited. As noted above, in the response to Comments 3 and 5 of the Atlantic Billfish section, this rule allows underharvests to be carried forward. However the U.S. has made a commitment to ICCAT not to carry forward underharvest, given the uncertainty surrounding landings of Atlantic marlin in the Commonwealth of Puerto Rico and the U.S. Caribbean, until such time as this is resolved. Thus, NMFS is not changing the proposed alternative. This rule is anticipated to allow the U.S. to continue to successfully pursue international marlin conservation measures by fully implementing U.S. international obligations and potentially provide a minor ecological impact with, at most, minor adverse economic impacts.

NMFS received public comment opposed to, and in support of, the Atlantic white marlin catch and release alternative. The commenters opposed to the alternative expressed concerns over potential adverse economic impacts to the fishery if catch and release only fishing for Atlantic white marlin were required. The commenters supporting the landings prohibition stated concerns over white marlin stock status, the ESA listing review, and maintaining leadership at the international level. Based on these comments as well as a number of other factors, including but not limited to, the impending receipt of a new stock assessment for Atlantic white marlin and upcoming international negotiations on Atlantic marlin, NMFS changed its preferred alternative and chose not to prohibit landings of Atlantic white marlin in this final rule. The implementation of circle hook requirements (alternative E3) is an important first step in reducing mortality in the directed billfish fishery. NMFS will consider, as necessary and appropriate, catch and release only fishing options for Atlantic white marlin as well as other billfish conservation measures in future rulemakings.

F. BFT Quota Management

NMFS received public comment in the past regarding the publication and timing of annual BFT specifications. Administrative or other delays in publishing the annual BFT specifications can have adverse social and economic impacts due to constituents' inability to make informed business decisions. NMFS did not change the proposed alternative as a result of public comment on the proposed rule. Under this rule, the annual BFT quota specifications would establish baseline domestic quota category allocations, and adjust those allocations based on the previous years under- and/or overharvest. Any delay in publishing the annual BFT quota specifications would prolong the establishment of a baseline quota in any of the domestic categories.

Fishermen have commented that knowing the exact schedule of BFT RFDs prior to the season facilitates planning and scheduling of trips. The preferred alternative F6 should help facilitate the development of timely schedules. NMFS did not change the proposed alternative as a result of public comment on the proposed rule.

G. Timeframe for Annual Management of HMS Fisheries

Preferred Alternative G2, which would change the timeframe for annual management of HMS fisheries, was modified because the comment period on the proposed rule was extended. The fishing year in 2007, rather than 2006 as described in the Draft Consolidated HMS FMP, would be compressed. During the public comment period, several commenters expressed concern about the effect of a calendar year management cycle on the availability of quota rollover from the previous calendar year during the January portion of the south Atlantic fishery. Under changes to the BFT management program included in this rule, the January subperiod would receive a quota of 5.3 percent of the annual ICCAT allocation.

H. Authorized Fishing Gears

With regard to authorized gears, there were public comments in support of preferred alternative H2 to authorize speargun fishing as a permissible gear type for recreational Altantic BAYS tuna. NMFS received comments indicating that recreational spearfishermen place a high value on spearfishing for tunas, and are currently traveling outside of the United States for the opportunity to participate in tunas speargun fisheries. The final rule will allow recreational BAYS fishing. This is a modification from the proposed rule that would have also allowed recreational fishing for BFT. Due to concern over the status of BFT, NMFS decided not to allow spearfishing for BFT at this time.

During the public comment period, NMFS received comments expressing confusion over the current regulatory regime regarding green-stick gear, unease over the potential impacts and intent of the preferred alternative in the Draft Consolidated HMS FMP, and concern over potential negative impacts of the green-stick gear. Therefore, NMFS is not finalizing alternative H4, which would have authorized green-stick gear. Rather, NMFS will work with the industry to ensure participants are familiar with current regulations.

In regard to buoy gear, NMFS received public comments requesting that commercial vessels be limited to deploying fewer than 35 individual buoy gears. Additionally, commercial

fishermen familiar with this gear type requested that they be allowed to attach multiple floatation devices to buoy gears to aid in monitoring and retrieval, as well as allow them to use ''bite indicator'' floats that will alert them to gears with fish attached. In response to public comment, NMFS modified the preferred alternative to allow fishermen to use more than one floatation device per gear and configure the gear differently depending on vessel and crew capabilities, or weather and sea conditions. This increased flexibility may result in positive social impacts and increased safety at sea.

I. Regulatory Housekeeping Measures

The public also provided comments on the proposed regulatory housekeeping alternatives. NMFS requested public comment regarding whether or not to define ''fishing floats'' in the regulations, and on potential language for a ''float'' definition. Several commenters indicated that the number of floats is not an appropriate gauge to determine the type of fishing gear that is being deployed, and that the presence of ''bullet floats,'' anchors, or the type of mainline would be better indicators. Other commenters stated a float requirement would be an unnecessary burden that could diminish the flexibility of vessel operators to participate in different fishing activities, depending upon the circumstances. Finally, consultations with NMFS Office of Law Enforcement indicated that the float requirement in alternative I1(b) would not be practical. Based on these comments, NMFS chose not to prefer alternative I1(b) in the FEIS. Although alternative I1(b) was preferred in conjunction with alternative I1(c) in the Draft Consolidated HMS FMP, NMFS believes that the objective of this alternative can be effectively achieved by implementing alternative I1(c) (species composition of catch) alone.

On the basis of public comment, NMFS modified the list of demersal ''indicator'' species associated with alternative I1(c) from the list in the Draft Consolidated HMS FMP by removing silky, great hammerhead, scalloped hammerhead, and smooth hammerhead sharks from the list, and by adding tilefish, blueline tilefish, and sand tilefish to the list. NMFS believes these changes are appropriate because these shark species can be caught on both pelagic and bottom longlines, and because the tilefish species are representative of demersal fishing activity.

NMFS received comments indicating that alternative I1(c) could adversely affect longline vessels that fish, at least part of a trip, in HMS closed areas and that catch both demersal and pelagic species on those trips. Similar to the comments received regarding alternative I1(b), there were concerns that, by establishing a species threshold when fishing in HMS closed areas, this alternative would restrict the flexibility of longline vessel operators to participate in different fishing activities depending upon the circumstances. Also, adverse economic impacts could result if vessel operators are unable to retain a portion of their catch that otherwise would have been retained on mixed fishing trips in the closed areas, or if they must choose to fish outside of the closed areas. NMFS received other comments indicating that there could be additional costs on vessels if they are boarded at sea by enforcement, and it was necessary to retrieve or observe fish in the hold in order to calculate the percentages of demersal and pelagic species possessed onboard. The Agency, however, still finds that this preferred alternative is important in maintaining existing time/area closures.

NMFS received comments supporting and opposing preferred alternative I2(b), which will require that the second dorsal fin and anal fin remain on all sharks through landing. Some comments confirmed that retention of the second dorsal and anal fins through landing could improve shark identification and species-specific landing data. Other comments indicated that this alternative would do little to improve shark identification. NMFS received comments that, although these fins are valuable, retaining them until landing was acceptable. The Agency received a comment opposing this alternative due to the additional time and revenue losses that may result from removing the smaller/secondary fins after docking. NMFS is finalizing this proposed alternative. While offloading and processing procedures may initially have to be adjusted, in the long-term this alternative will facilitate improved quota monitoring and stock assessment data which could result in a larger quota and larger net revenues for both the fishermen and dealers.

Public comment suggests that, among active fishery participants, a requirement for handlines to remain attached to all vessels could potentially reduce the number of handlines that could be fished or deployed. Operationally, it may be less efficient to fish with several attached handlines, as they may be more prone to entanglement. Because this alternative could restrict or limit fishing effort and because NMFS does not know the number of handline users that already attach the handline to the vessel, it is projected to produce unquantifiable positive ecological impacts, including a reduction in the bycatch of undersized swordfish, other undersized species, protected species, and target species catches. Based upon public comment the practice of detaching handlines does not appear to be widespread, but it may be growing among a small number of vessel operators, primarily targeting swordfish in the East Florida Coast closed area. According to public comment, recreational swordfish catches would most likely be affected, as that is the primary target species. If few recreational vessels are currently fishing with unattached handlines, then any social or economic impacts associated with this alternative would be minimal. NMFS did not change this alternative between proposed and final rules.

NMFS received comments indicating that the proposed alternative (I9(b)), which would require vessel owners to report non-tournament recreational landing of North Atlantic swordfish and Atlantic billfish, could potentially disadvantage absentee vessel owners. Based upon this public comment, NMFS modified this alternative slightly from the proposed rule by specifying that a vessel owner's designee may also report landings in lieu of the owner, but the owner would be responsible for the requirement.

Finally, NMFS received several general comments regarding the information presented regarding the HMS recreational sector. Section 3.5.2 of the FEIS provides detailed information regarding the data available and past research concerning HMS recreational fisheries. Economic data on recreational fishing is difficult to collect and challenging to interpret. Nevertheless, NMFS has undertaken efforts to improve, update, and expand upon the economic information regarding HMS recreational fisheries.

A Description and an Estimate of the Number of Small Entities to which the Rule will Apply

NMFS considers all permit holders to be small entities as reflected in the Small Business Administration's (SBA) size standards for fishing entities (5 U.S.C. 604(a)(3)), and the SBA size standards for defining a small versus large business entity in this industry. All permit holders are considered to be small entities because they either had gross receipts less than $3.5 million for fish-harvesting, gross receipts less than $6.0 million for charter/party boats, or 100 or fewer employees for wholesale dealers. A full description of the

fisheries affected, the categories and number of permit holders, and registered tournaments can be found in the Final Consolidated HMS FMP.

The management measures in this final rule will apply to all HMS permit holders. These currently include the approximately 576 permitted pelagic and bottom longline vessels, 240 directed shark and 312 incidental shark permitted vessels, 4,824 General category permit holders, 621 permitted shark and swordfish dealers, 416 permitted Atlantic tuna dealers, 4,173 CHB permit holders, 25,238 Angling permit holders, and 256 registered HMS tournaments. Other sectors of the HMS fisheries such as dealers, processors, bait houses, and gear manufacturers, some of which are considered small entities, might be indirectly affected by the final measures, particularly time/area closures, Atlantic billfish, and authorized gear alternatives. However, the rule does not apply directly to them, unless otherwise noted above. As such, economic impacts on these other sectors (dealers, processors, bait houses, and gear manufacturers) are discussed in Final Consolidated HMS FMP.

A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

This final rule will not result in additional reporting, recordkeeping, and compliance requirements that will require new Paperwork Reduction Act filings (5 U.S.C. 604(a)(4)). However, some of the final measures will modify existing reporting and recordkeeping requirements. These include mandatory one day workshops for vessel owners, vessel operators, and shark dealers; coordination efforts directed at government efforts to gather additional information about finetooth shark mortality; and BFT dealer electronic reporting option. In addition to the reporting and recordkeeping requirements of this rule, this rule includes compliance requirements (5 U.S.C. 604(a)(4)). These compliance requirements include requiring anglers aboard HMS permitted vessels that are participating in an Atlantic billfish tournament to use only non-offset circle hooks when deploying natural baits or natural bait/artificial lure combinations, requiring the retention of shark second dorsal and anal fins, and establishing the minimum and maximum number of floats for bottom longline and pelagic longline gear definitions. Other measures will change quota allocations, timeframes, authorized gear types, definitions, and other management measures, but will not likely change reporting or compliance in the fishery.

A Description of the Steps Taken to Minimize the Significant Economic Impact on Small Entities

One of the requirements of a FRFA is to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes and to describe why each of the other significant alternatives to the rule considered by the agency was rejected (5 U.S.C. 604(a)(5)).

As noted earlier, NMFS considers all permit holders to be small entities. In order to meet the objectives of this proposed FMP and the statutes (i.e., Magnuson-Stevens Act, ATCA, ESA) as well as address the management concerns at hand, NMFS cannot exempt small entities or change the reporting requirements for small entities. Among other things, the final FMP will set quotas for the fishing season, retention limits for the recreational fishery, and gear restrictions, all of which would not be as effective with differing compliance and reporting requirements.

As described below, NMFS considered a number of alternatives that could minimize the economic impact on small entities, particularly those pertaining to workshops, time/area closures, northern albacore tuna, finetooth sharks, Atlantic billfish, BFT quota management, timeframe for annual management, authorized fishing gears, and regulatory housekeeping measures.

A. Workshops

The final measures for the protected species safe handling, release, and identification workshops require mandatory workshops and certification on a three year renewal timeline for all HMS pelagic and bottom longline vessel owners and operators and shark gillnet vessel owners and operators. They were designed to minimize the economic impacts on fishermen, while complying with the 2003 BiOp and the post-release mortality targets for protected resources established in the June 2004 BiOp. The protected species safe handling, release, and identification workshops measure is estimated to cost each bottom and pelagic longline vessel owner up to $281 and $448, respectively, in potentially lost revenue share as well as unquantifiable travel costs to attend a workshop. The aggregate economic impact is estimated to be between $154,269 and $258,048 in the first year. Longline vessel operators will also be affected by this rule, but this rule might not affect the economic well-being of the small businesses for which they work. In addition, the estimated twenty shark gillnet owners that will be participating in required workshops will each lose up to $424 in revenue share based on 2004 logbook data, as well as unquantified travel costs to attend a workshop.

NMFS will strive to host a number of workshops in regional fishing hubs in order to minimize travel and lost fishing time. Besides the costs of travel and lost time, NMFS does not anticipate any additional costs for workshop participants. NMFS will attempt to hold workshops during periods when the fishery is typically inactive, effectively minimizing lost fishing time. To minimize the overall economic cost of these workshops, this rule limits mandatory participation in these workshops to owners and operators. NMFS has also selected a recertification period of 3 years that will allow for sufficient retraining to maintain proficiency and update fishermen on new research and development related to the subject matter, while not placing an excessive economic burden on the participants due to lost fishing time and travel. Two, three, and five year recertification periods were considered. In addition, to lower the costs of recertification, NMFS is considering the use of alternative sources of media including CD-ROM, DVDs, or web-based media that would not result in travel costs or lost fishing time, and would allow allow private certified trainers to provide training at tailored times and locations to minimize any costs.

The measures requiring mandatory workshops for all federally permitted shark dealers was selected because species-specific identification of offloaded shark carcasses is much more difficult than other HMS, as evidenced by the large proportion of ''unclassified'' sharks listed on shark dealer logbooks. The Agency will attempt to minimize economic impacts to shark dealers by holding workshops at fishing ports to minimize travel costs and during non-peak fishing times to minimize perturbations to business activity, to the extent possible. Dealers may also specify proxies to attend workshops in order to increase flexibility, minimize costs, and increase the probability of having a trained individual at each authorized dealer location. Similar measures as those being considered for the protected species safe handling, release, and identification recertification are being considered for the Atlantic shark identification workshops for shark dealers in order to minimize the economic impacts caused by this measure.

Several alternatives were considered for the workshop measures. The economic impacts of these alternatives are detailed in Final Consolidated HMS FMP. The No Action and voluntary HMS identification workshop alternatives would have less onerous economic impacts relative to the measures in this final rule. However, these alternatives would not address the persistent problems associated with species-specific shark identification in dealer reports, nor satisfy the requirements and goals of the Final Consolidated HMS FMP, nor aid in rebuilding the shark fishery.

NMFS also considered two additional renewal timetables of two and five years. A renewal timetable of five years for protected species safe handling, release, and identification workshops would allow a more extensive period of time to lapse between certification workshops than necessary to maintain proficiency and provide updates on research and development of handling and dehooking protocols. In a similar fashion, recertification every five years for HMS identification workshops would also allow a more extensive period of time to lapse between certification workshops than necessary to maintain proficiency in shark species identification.

B. Time/Area Closures

The final measures to implement complementary measures in the Madison-Swanson and Steamboat Lumps marine reserves, and to establish criteria to be considered when implementing new time/area closures or modifying existing time/area closures, were designed to minimize economic impacts incurred by fishermen, while simultaneously reducing the bycatch of non-target HMS and protected species, such as sea turtles, in Atlantic HMS fisheries. The establishment of complementary HMS regulations in the Madison-Swanson and Steamboat Lumps marine reserves will result in minimal economic impacts (e.g., only three commercial sets were reported in these areas between 1996 - 2004). Creating these complementary HMS regulations will consolidate and simplify requirements for fishermen, and therefore simplify compliance. This measure will allow surface trolling from May through October to partially alleviate any negative economic impacts associated with the closures for the HMS recreational and charter/headboat sector.

Other time/area alternatives considered in addition to the No Action alternative were a closure of 11,191 nm^2 in the central Gulf of Mexico to pelagic longline gear, a closure of 2,251 nm^2 in the Northeast to pelagic longline gear, a closure of 101,670 nm^2 in BFT spawning areas in the Gulf of Mexico, a closure west of 86° W longitude in the Gulf of Mexico to pelagic longline gear, a closure of 46,956 nm^2 in the Northeast to pelagic longline gear, a prohibition on the use of bottom longline gear in an area off the Florida Keys to protect endangered smalltooth sawfish, and a prohibition on the use of pelagic longline gear in HMS fisheries in all areas. These closures alternatives were not selected due to large economic impacts (ranging from an estimated decrease in annual revenues as high as $10.9 million for a closure west of 86° W longitude year-round closure in the Gulf of Mexico under the no-redistribution of effort model) with variable ecological benefits between species when considering the redistribution of effort. The details of the economic impacts associated with these other alternatives are provided in Final Consolidated HMS FMP. In addition to the closure alternatives, modifications to existing closures were also considered for the Charleston Bump closure and the Northeastern U.S. closure, which would provide some economic relief but would not meet ecological needs, and may result in increased interactions with protected resources.

The final measure will establish criteria that will guide future decision-making regarding implementation or modification of time/area closures. This will provide enhanced transparency, predictability, and understanding of HMS management decisions. The time/area closure criteria will not have immediate impacts. Any ecological, social, or economic impacts of a specific closure or modified closure would be analyzed in the future when that specific action is proposed.

C. Northern Albacore Tuna

The selected alternative for northern albacore management, which will establish the foundation for developing an international rebuilding program, was designed to address rebuilding of the northern albacore tuna fishery while simultaneously minimizing economic impacts incurred by fishermen. This measure will have minimal economic impacts, because it will not implement any additional restrictions at this time.

Other alternatives considered were No Action and taking unilateral proportional reductions in northern albacore tuna harvest. Taking unilateral action to address northern albacore tuna on the part of the U.S. would likely not be effective in rebuilding the stock because the U.S. is a small participant in this fishery, and would have larger economic impacts than the selected alternative. The No Action alternative was rejected, because it would not include a rebuilding strategy in the FMP.

D. Finetooth Sharks

The final measure selected for finetooth shark management was designed to implement a plan that prevents overfishing while minimizing economic impacts incurred by fishermen and potential negative ecological impacts. This alternative is expected to have minimal to no economic impacts, because no new restrictions are being proposed at this time. Long-term, the alternative will have positive ecological and economic impacts by implementing a plan to address finetooth mortality in HMS and other fisheries.

Other alternatives considered were No Action, commercial management measures (e.g., gear restrictions, quota reduction), and recreational management measures (e.g., gear restrictions, minimum size increase). Only the No Action alternative would have less economic impact relative to the preferred alternative. However, this alternative was not preferred because it would not implement a plan to prevent overfishing of finetooth sharks.

E. Atlantic Billfish

The final measures for Atlantic billfish management require the use of non-offset circle hooks by anglers fishing from HMS permitted vessels participating in Atlantic billfish tournaments when deploying natural baits or natural bait/artificial lure combinations and implementing the ICCAT marlin landings limits. This requirement is designed to minimize economic impacts incurred by the recreational fishing sector, while enhancing the management of the directed Atlantic billfish fishery. Requiring the use of non-offset circle hooks by anglers fishing from HMS permitted vessels participating in Atlantic billfish tournaments when deploying natural baits or natural bait/artificial lure combinations will likely have a minimal economic impact, since it will not affect all billfish recreational anglers, but only tournament participants. Therefore, the impacts on hook manufacturers, retailers, and anglers will likely be limited given that J-hooks would continue to be permitted outside of tournaments and within tournaments with artificial lures. Impacts on tournaments will likely be minimal, given the increase in the

number of tournaments that provide special award categories or additional points for billfish captured and released on circle hooks. This measure will also likely have high compliance rates given the self-policing that is likely to occur among tournament participants competing for prizes, as well as the increasing use of tournament observers.

Several measures were also considered to minimize the economic impacts of the ICCAT marlin landings limits. These include the use of three separate levels of management measures based upon marlin landing thresholds: (1) no in-season management action if marlin landings do not approach action thresholds; (2)in-season minimum size increases to slow the pace of marlin landings for the remainder of the fishing year, if projections show the 250 marlin landing limit is being approached; and, (3) a shift to catch and release only fishing for Atlantic marlin for the remainder of a fishing year, if the 250 marlin landing limit is achieved or projected to be achieved. Under the calendar year management cycle, this three tiered approach also will help reduce any disproportionate economic impacts to CHB operators, tournaments, and anglers who fish for marlin late in the fishing year or in late season tournaments by providing anglers the greatest opportunity to land marlin over the entire fishing year. The ICCAT landing limit measures may potentially result in $1.3 to $2.7 million in economic impacts annually, if in-season management actions become necessary. However, barring substantial increases in effort and/or a change in angler behavior, this is considered unlikely based on historical landings trends.

Other alternatives considered for the directed billfish fishery were No Action, limiting all participants in the Atlantic HMS recreational fishery to using only non-offset circle hooks when deploying natural baits or natural bait/artificial lure combinations in all HMS fisheries, increasing the minimum size limit for Atlantic white and/or blue marlin, implementing recreational bag limits of one Atlantic billfish per vessel per trip, allowing only catch and release fishing for Atlantic white marlin, and allowing only catch-and-release fishing for Atlantic blue marlin. Only the No Action alternative would have less onerous economic impacts relative to the measures in this rule. However, the No Action alternative would not satisfy the requirements and goals of implementing the ICCAT recommendations under ATCA, rebuilding the Atlantic blue and white marlin fishery under the Magnuson-Stevens Act, or the objectives of the HMS FMP. While the other alternatives may have additional ecological benefits for billfish, the other alternatives would have larger economic impacts than the selected alternatives and could affect all HMS anglers, not only those who are fishing for billfish.

F. BFT Quota Management

The final measures for BFT quota management include revised General category time-periods and subquotas to allow for a formalized winter fishery, clarified procedures for calculating the Angling category school size-class subquota allocation, modification of the BFT specification process and streamlining annual under/overharvest procedures, an individual quota category carryover limit and authorization of the transfer of quota exceeding limit, and revised and consolidated criteria that would be considered prior to performing a BFT inseason action. These measures were designed to minimize economic impacts incurred by fishermen, while enhancing and clarifying BFT quota management and inseason actions.

Revised General category time-periods and subquotas to allow for a formalized winter fishery will likely balance consistent quota allocations and the flexibility to amend them in a timely fashion. This measure will slightly reduce General category quota from early time periods, thereby allowing for a winter General category BFT fishery during the months of December and January, and increasing regional access. By shifting the allocated quota from the June through August time-period, which has an overall higher allocation, to a later time-period any adverse impacts will be mitigated by the increased revenue generated in the later time-period.

The revised procedures for calculating the Angling category school size-class subquota allocation will clarify the procedures NMFS uses in calculating the ICCAT recommendation regarding the 8 percent tolerance for BFT under 115 cm. It would also maintain the north/south dividing line that separates the Angling category. This alternative is not likely to have an economic impact.

The modification of the BFT specification process and streamlining annual under/overharvest procedures will simplify quota allocations by eliminating the need to allocate each domestic quota category's baseline allocation each year, as the allocation percentages and the actual quota equivalents (measured in metric tons) will be codified in the regulations implementing the consolidated HMS FMP at least until ICCAT alters its BFT TAC recommendation. This measure will have positive economic impacts to the domestic BFT fishery as a whole by allowing BFT fishery participants, either commercial or recreational in nature, to make better informed decisions on how to best establish a business plan for the upcoming season.

Establishing an individual quota category carryover limit for BFT and authorization of the transfer of quota exceeding the limit will have some economic impacts as a result of limiting the amount of underharvest of the BFT quota that could be rolled over from one year to the next within a category. However, this measure was designed to mitigate any impacts by allowing NMFS to redistribute quota exceeding the proposed 100 percent rollover cap to the Reserve or to other domestic quota categories, provided the redistributions are consistent with ICCAT recommendations and the redistribution criteria.

Revised and consolidated criteria that would be considered prior to performing a BFT inseason action will result in slightly more positive economic impacts as the criteria NMFS must consider when making an inseason action determination will be consolidated and consistent regardless of what type of inseason action is being considered. This will minimize confusion and provide additional transparency to the management process.

Other alternatives considered regarding bluefin tuna quota management in addition to the No Action alternatives were establishing General category time-periods, subquotas, and geographic set asides annually via framework actions; establishing monthly General category time-periods and subquotas; revising the General category time-periods and subquotas to allow for a formalized winter fishery with different time-period allocations; eliminating the underharvest quota carryover provisions; and eliminating the BFT inseason actions. These additional alternatives would not likely reduce overall impacts to the fishery as a whole relative to the selected final measures.

G. Timeframe for Annual Management of HMS Fisheries

The final measure that would shift the time frame to a calendar year (January 1 to December 31) management cycle was designed to minimize economic impacts on HMS fisheries and simplify HMS fishery management and reporting to ICCAT. This measure will not affect the shark fishery, since that fishery is already operating under a calendar year.

The shift in the other HMS fisheries' timeframe for annual management would establish consistent timing between U.S. domestic and international management programs, reducing the complexity of U.S. reports to ICCAT and creating more transparent analyses in the U.S. National Report. Setting an annual quota and other fishery specifications on a multi-year basis for BFT could mitigate any potential negative impacts associated with reduced business planning periods that may result from a calendar year timeframe. The flexibility established in the billfish measures could partially mitigate any negative regional economic impacts to marlin tournaments, charters, and other related recreational fishing businesses. To facilitate the transition to a calendar year management timeframe for BFT and swordfish, the 2007 fishing year would be abbreviated from June 1, 2007, through December 31, 2007, which could provide slightly higher quotas during that time period and slight positive impacts for fishermen.

Other alternatives considered were to maintain the current fishing year and to shift the fishing year to June 1 - May 31 for all HMS species. These alternatives are not likely to result in economic impacts substantially different than this final rule. However, they would not meet the objectives of this action because these alternatives would not simplify the management program for HMS fisheries and improve the U.S. basis for negotiations at international forums that use calendar year reporting data.

H. Authorized Fishing Gears

The final measures to authorize speargun fishing gear for BAYS tunas in the recreational Atlantic tuna fishery, authorize buoy gear in the commercial swordfish handgear fishery, and allow secondary gears (also known as cockpit gears), were designed to reduce the economic impacts to fishermen and even enhance economic opportunities in recreational and commercial fishing. Specifically, the measure authorizing speargun fishing will enhance economic opportunities in the tuna recreational fishery by including a new authorized class of recreational fishing, speargun fishing.

The swordfish handgear fishery may currently utilize individual handlines attached to free-floating buoys; however, the final measure will require that handlines used in HMS fisheries be attached to a vessel. Changing the definition of individual free-floating buoyed lines, that are currently considered to be handlines, to ''buoy gear,'' will allow the commercial swordfish handgear fishery to continue utilizing this gear type. This measure will explicitly authorize this gear type but limit vessels to possessing and deploying no more than 35 individual floatation devices with each gear having no more than two hooks or gangions attached. The economic impact of this measure will likely be minimal, since the upper limit on the number of buoys is based on information obtained about the fishery though public comment, and based on what NMFS has identified as the manageable upper limit for the commercial sector. Furthermore, few current permit holders reporting fishing with this gear (only seven vessels in 2004) and the use of this gear appears limited to the East Coast of Florida.

Finally, the measure clarifying the allowance of secondary gears (also known as cockpit gears) will likely reduce confusion over the allowable use of secondary gears to subdue HMS captured on primary authorized gears. The use of these secondary gears might result in positive economic benefits from anticipated increases in retention rates.

Other alternatives considered in addition to No Action were to authorize speargun fishing gear in both the commercial tuna handgear and recreational tuna fisheries, authorizing green-stick fishing gear, and authorizing buoy gear in the commercial swordfish handgear fishery with 50 floatation devices with no more than 15 hooks or gangions attached to each gear. None of the non-preferred alternatives would have fewer economic impacts than the preferred alternatives. The alternative to authorize speargun fishing gear in both the commercial tuna handgear and recreational tuna fisheries was not selected because it could result in some additional effort from commercial handgear tuna fishing and potentially impact BFT stocks. Green-stick gear was not preferred because of a lack of data from established monitoring programs to determine the ecological impacts of formally introducing this gear and the potential for increases in fishing effort and landings on YFT and other HMS. Finally, the alternative authorizing buoy gear in the commercial swordfish handgear fishery with 50 floatation devices and no more than 15 hooks or gangions attached was expected to have additional negative ecological impacts compared to the preferred alternative.

I. Regulatory Housekeeping Measures

The final measures for regulatory housekeeping items were designed to minimize economic impacts, while also clarifying regulatory definitions and requirements, facilitating species identification, and enhancing regulatory compliance. The final measure that will differentiate between BLL and PLL gear by using the species composition of catch landed will more clearly define the difference between BLL and PLL gear using performance standards based on the composition of catch landed. This will help to clarify the difference between these two gear types and enhance compliance with time/area closures that place restrictions on these two gear types. There could be some, but likely limited, economic impacts to vessels that may currently fish in gear restricted time/areas closures that do not conform to the BLL and PLL performance standards. This performance based standard could adversely impact those longline vessels that regularly target both demersal and pelagic species on the same trip, and that fish in PLL or BLL closed areas.

Other alternatives considered in addition to the No Action alternative were to specify maximum and minimum number of floats for BLL and PLL gear, require time/depth recorders on all HMS longlines, and base closures on all longline vessels. Only the No Action alternative could have less onerous economic impacts relative to the preferred alternative. However, the No Action alternative would not address the Agency's concerns with differentiating between bottom and pelagic longline gear. The Agency did not prefer the alternative that would specify a maximum and minimum allowable number of commercial fishing floats to distinguish between BLL and PLL fishing gear because floats are not easily defined and the alternative may be impracticable to enforce. The float requirement could also result in unnecessary burden that could diminish the flexibility of vessel operators to participate in different fishing activities, depending on the circumstances. Requiring the use of time/depth recorders was not preferred because they could cost vessels between $1,400 and $6,600 to acquire and the reduced efficiencies associated with their use could cause increases in the mortality of discarded fish. The Agency did not select the alternative that based HMS time/area closures on all longline vessels since it would have significant economic impacts.

The final measure for shark identification, which will require that the second dorsal fin and anal fin remain attached on all sharks, addresses issues associated with shark species identification, but will be flexible enough to allow fishermen to remove the most valuable fins in order to minimize the economic impacts of this

alternative. Fishermen could experience, in the short-term, some adverse economic impacts associated with lower revenues associated with keeping the second dorsal and anal fins on sharks. Other alternatives considered in addition to the No Action alternative were to require the dorsal and anal fin on all sharks except lemon and nurse sharks and to require that all fins on all sharks be retained. The No Action alternative and the alternative requiring the dorsal and anal fin on all sharks except lemon and nurse sharks could have fewer economic impacts relative to the preferred alternative. These alternatives, however, would not satisfy enforcement and species identification needs, such as improving the accuracy of dealer reporting of sharks landed by species needed for accurate stock assessments and quota monitoring, and enabling enforcement officers to identify when fishermen illegally keep fins from species that are different from those they land or species that cannot be landed. Furthermore, requiring all fins to remain on all sharks through landing would result in the largest economic burden of any of the alternatives since the current offloading process and the transition of fish between dealers and fishermen is dependent on fins being removed from the shark before the sharks are offloaded.

The final measures that will prohibit the purchase or sale of HMS from vessels in excess of retention limits will enhance compliance with current regulations by consolidating the requirement for both vessels and dealers. These measures will have minimal economic impact on dealers and vessels following the current retention limits. The only additional alternative considered was No Action, which would have less economic impact than the preferred alternatives but would not satisfy the enforcement or monitoring objectives of eliminating the potential for the sale of illegally harvested HMS in excess of commercial retention limits.

The final measure to clarify the regulations for the East Florida Coast closed area will make its outer boundary consistent with the outer boundary of the EEZ. This measure is not expected to have any economic impact since fishing activity is likely to be limited in this small area. The alternative is to retain the current technical error under the No Action alternative, which results in confusion.

The measure to clarify the definition of ''handline gear'' by requiring that they remained attached to, or in contact with, a vessel is expected to have only minimal economic impacts, since unattached handline gear would be defined as ''buoy gear'' and authorized exclusively for use in the directed commercial swordfish fishery. Other alternatives considered were No Action and to require handlines be attached to recreational vessels only. These two alternatives could have fewer economic impacts relative to the selected alternative, but they would not meet the ecological objectives of the final Consolidated HMS FMP of limiting the potential future expansion of the handline sector and possibly reducing the amount of gear lost.

The final measure prohibiting commercial vessels from retaining billfish will not have any economic impacts because current regulations do not allow these vessels to sell billfish that are landed. This alternative will clarify and consolidate the requirements for commercial vessels to make them consistent with the regulations prohibiting vessels with pelagic longline gear from retaining billfish. The only other alternative considered was No Action, which could have less social impacts than the selected alternative but it would not satisfy ecological needs of rebuilding billfish stocks because there is potential that commercial fishermen could retain billfish for their own personal use under the No Action alternative.

The final measure that will allow Atlantic tuna dealers the flexibility to submit reports using the Internet, once this option is available, will potentially simplify reporting and reduce costs. The other alternatives considered were No Action and requiring BFT dealers to report online (with specific exceptions). These alternatives would not result in less economic burden than the final rule because it would provide dealers with the option of a more efficient data reporting option that might better fit with their operations.

The final measures requiring and specifying submission dates of no fishing, cost-earnings, and annual expenditures reporting forms will clarify current regulations and potentially enhance compliance. The other alternative considered was No Action; that alternative would not meet the NMFS' objectives to collect quality data to manage the fishery because fishermen were not providing complete and accurate data. Neither alternative is expected to have any economic impacts.

The final measure that will require vessel owners, or their designee, to report non-tournament recreational landings will clarify and simplify the reporting process by codifying the current prevalent practice of recreational landings being reported by vessel owners versus individual anglers. The other alternative considered, No Action, might result in less economic burden to small businesses but would not satisfy the goal of improving reporting or other objectives of the Consolidated HMS FMP because NMFS suspects that individual recreational fishermen may not properly report landings.

The final measures will include a provision to conduct additional discussions at ICCAT regarding the long-term implications of allowing unused BFT quota from the previous year being added to the subsequent year's allocation. Depending on the results of these discussions, the regulations and operational procedures may need to be further amended in the future. In the interim, NMFS would maintain the current regulatory text, but would amend the practice of allowing under/overharvest of the set-aside allocation to be rolled into, or deducted from, the subsequent fishing year's set-aside allocation. Other alternatives considered include No Action and amending the regulatory text to clarify that rollover provisions would apply to this set-aside quota. Accumulation of incidental quota under a rollover provision could possibly provide an incentive to target BFT with longline gear, and thus this alternative would not fully reflect the intent of the 2002 ICCAT BFT quota recommendation.

Finally, the final measure that will require recreational vessels with a Federal permit to comply with Federal regulations regardless of where they are fishing, would standardize compliance with HMS regulations for vessels possessing a Federal HMS permit. This will likely simplify compliance with regulations, except in cases where a state has more restrictive regulations. The other alternative considered was No Action, which could have marginally less economic impact than the preferred alternative, but it would not simplify and enhance compliance with HMS recreational fishing regulations.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the

compliance guide for this final rule is available (see **ADDRESSES**).

List of Subjects

50 CFR Part 300

Fisheries, Foreign relations, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Foreign relations, Penalties, Reporting and recordkeeping requirements.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: September 22, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR chapters III and VI as follows:

CHAPTER III—INTERNATIONAL FISHING AND RELATED ACTIVITIES

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species

■ 1. The authority citation for subpart M continues to read as follows:

Authority: 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 300.182, paragraph (d) is revised to read as follows:

§ 300.182 HMS international trade permit.

* * * * *

(d) *Duration.* Any permit issued under this section is valid for the period specified on it, unless suspended or revoked.

* * * * *

■ 3. In § 300.185, paragraphs (b)(3) and (c)(3) are revised to read as follows:

§ 300.185 Documentation, reporting and recordkeeping requirements for statistical documents and re-export certificates.

* * * * *

(b) * * *

(3) *Reporting requirements.* A permit holder must ensure that the original statistical document, as completed under paragraph (b)(2) of this section, accompanies the export of such products to their export destination. A copy of the statistical document must be postmarked and mailed by said permit holder to NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was exported from the U.S. or a U.S. insular possession. Once a system is available, permit holders will also be able to submit the forms electronically via the Internet.

(c) * * *

(3) *Reporting requirements.* For each re-export, when required under this paragraph (c), a permit holder must submit the original of the completed re-export certificate and the original or a copy of the original statistical document completed as specified under paragraph (c)(2) of this section, to accompany the shipment of such products to their re-export destination. A copy of the completed statistical document and re-export certificate, when required under this paragraph (c), must be postmarked and mailed by said permit holder to NMFS, at an address designated by NMFS, within 24 hours of the time the shipment was re-exported from the U.S. Once a system is available, permit holders will also be able to submit the forms electronically via the Internet.

* * * * *

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 4. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 5. Section 600.725, paragraph (v), heading ''IX. Secretary of Commerce'', is amended by:

A. Redesignating entries 1.B. through 1.J. as entries 1.C. through 1.K., respectively.

B. Redesignating entry 2. as entry 1.L. and entry 3. as entry 2., respectively.

C. Adding entry 1.B.

D. Revising entry 1. introductory paragraph, entry 1.A, and newly redesignated entries 1.I. and 1.L.

The additions and revisions read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * *	
IX. Secretary of Commerce	
1. Atlantic Highly Migratory Species Fisheries (FMP):	
A. Swordfish handgear fishery.	A. Rod and reel, harpoon, handline, bandit gear, buoy gear.
B. Swordfish recreational fishery.	B. Rod and reel, handline.
* * * * *	
I. Tuna recreational fishery.	I. Speargun gear (for bigeye, albacore, yellowfin, and skipjack tunas only); Rod and reel, handline (all tunas).
* * * * *	
L. Atlantic billfish recreational fishery.	L. Rod and reel.
* * * * *	

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 6. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

PART 635 [AMENDED]

■ 7. In part 635, remove the phrase ''Northeast Distant closed area'' wherever it appears and add in its place ''Northeast Distant gear restricted area''.

■ 8. Section 635.2 is amended by:

A. Revising the definitions of ''East Florida Coast closed area'', ''Fishing year'', ''Handgear'', ''Handline'', and ''Shark''.

B. Revising paragraph (5) under the definition of ''Management unit''.

C. Removing the definition of ''ILAP''.

D. Adding definitions, in alphabetical order, for ''Atlantic shark identification workshop certificate'', ''BAYS'', ''Buoy gear'', ''Floatation device'', ''Madison-Swanson closed area'', ''Protected species safe handling, release, and identification workshop certificate'', ''Speargun fishing gear'', and ''Steamboat Lumps closed area''.

The additions and revisions read as follows:

§ 635.2 Definitions.

* * * * *

Atlantic shark identification workshop certificate means the document issued by NMFS, or its designee, indicating that the person named on the certificate has successfully completed the Atlantic shark identification workshop.

* * * * *

BAYS means Atlantic bigeye, albacore, yellowfin, and skipjack tunas as defined in § 600.10 of this part.

* * * * *

Buoy gear means a fishing gear consisting of one or more floatation devices supporting a single mainline to which no more than two hooks or gangions are attached.

* * * * *

East Florida Coast closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 31°00′ N. lat. near Jekyll Island, GA, and proceeding due east to connect by straight lines the following coordinates in the order stated: 31°00′ N. lat., 78°00′ W. long.; 28°17′10″ N. lat., 79°11′24″ W. long.; then proceeding along the outer boundary of the EEZ to the intersection of the EEZ with 24°00′ N. lat.; then proceeding due west to 24°00′ N. lat., 81°47′ W. long.; and then proceeding due north to intersect the inner boundary of the U.S. EEZ at 81°47′ W. long. near Key West, FL.

* * * * *

Fishing year means—

(1) For Atlantic tunas and swordfish, before January 1, 2008 — June 1 through May 31. On or after January 1, 2008 — January 1 through December 31.

(2) For Atlantic billfish, On or after January 1, 2007 — January 1 through December 31.

(3) For sharks — January 1 through December 31.

* * * * *

Floatation device means any positively buoyant object rigged to be attached to a fishing gear.

* * * * *

Handgear means handline, harpoon, rod and reel, bandit gear, buoy gear, or speargun gear.

Handline means fishing gear that is attached to, or in contact with, a vessel; that consists of a mainline to which no more than two hooks or gangions may be attached; and that is released and retrieved by hand rather than by mechanical means.

* * * * *

Madison-Swanson closed area means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 29°17′ N. lat., 85°50′ W. long.; 29°17′ N. lat., 85°38′ W. long.; 29°06′ N. lat., 85°38′ W. long.; 29°06′ N. lat., 85°50′ W. long.; and 29°17′ N. lat., 85°50′ W. long.

Management unit * * *

* * * * *

(5) For sharks, means all fish of the species listed in Table 1 of Appendix A to this part, in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

* * * * *

Protected species safe handling, release, and identification workshop certificate means the document issued by NMFS, or its designee, indicating that the person named on the certificate has successfully completed the Atlantic HMS protected species safe handling, release, and identification workshop.

* * * * *

Shark means one of the oceanic species, or a part thereof, listed in Table 1 of Appendix A to this part.

* * * * *

Speargun fishing gear means a muscle-powered speargun equipped with a trigger mechanism, a spear with a tip designed to penetrate and retain fish, and terminal gear. Terminal gear may include, but is not limited to, trailing lines, reels, and floats. The term ''muscle-powered speargun'' for the purposes of this part means a speargun that stores potential energy provided from the operator's muscles, and that releases only the amount of energy that the operator has provided to it from his or her own muscles. Common energy storing methods for muscle-powered spearguns include compressing air and springs, and the stretching of rubber bands.

Steamboat Lumps closed area means a rectangular-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28°14′ N. lat., 84°48′ W. long.; 28°14′ N. lat., 84°37′ W. long.; 28°03′ N. lat., 84°37′ W. long.; 28°03′ N. lat., 84°48′ W. long.; and 28°14′ N. lat., 84°48′ W. long.

* * * * *

■ 9. In § 635.4, paragraphs (a)(10), (c)(2), (d)(4), (e)(1), (e)(2), (f)(1), (f)(2), (h)(2), (l)(1), (l)(2)(i), (l)(2)(ii)(B), (l)(2)(ii)(C), (l)(2)(viii), (l)(2)(ix), (m)(1), and (m)(2) are revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

(10) *Permit condition.* An owner of a vessel with a valid swordfish, shark, HMS Angling, or HMS Charter/Headboat permit issued pursuant to this part must agree, as a condition of such permit, that the vessel's HMS fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the U.S. EEZ, or outside the U.S. EEZ, and without regard to where such HMS, or gear, are possessed, taken, or landed. However, when a vessel fishes within the waters of a state that has more restrictive regulations pertaining to HMS, persons aboard the vessel must abide by the state's more restrictive regulations.

* * * * *

(c) * * *

(2) A vessel with a valid Atlantic Tunas General category permit issued under paragraph (d) of this section may fish in a recreational HMS fishing tournament if the vessel has registered for, paid an entry fee to, and is fishing under the rules of a tournament that has registered with NMFS' HMS Management Division as required under § 635.5(d). When a vessel issued a valid Atlantic Tunas General category permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in paragraph (c)(3) of this section.

* * * * *

(d) * * *

(4) A person can obtain a limited access Atlantic Tunas Longline category permit for a vessel only if the vessel has been issued both a limited access permit for shark and a limited access permit, other than handgear, for swordfish. Limited access Atlantic Tunas Longline category permits may only be obtained through transfer from current owners consistent with the provisions under paragraph (l)(2) of this section.

* * * * *

(e) * * *

(1) The only valid Federal commercial vessel permits for sharks are those that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

(2) The owner of each vessel used to fish for or take Atlantic sharks or on which Atlantic sharks are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of two types of commercial limited access shark permits: Shark directed limited access permit or shark incidental limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which sharks are possessed in excess of the recreational retention limits intends to sell the sharks.

* * * * *

(f) * * *

(1) The owner of each vessel used to fish for or take Atlantic swordfish or on which Atlantic swordfish are retained, possessed with an intention to sell, or sold must obtain, in addition to any other required permits, only one of three types of commercial limited access swordfish permits: Swordfish directed limited access permit, swordfish incidental limited access permit, or swordfish handgear limited access permit. It is a rebuttable presumption that the owner or operator of a vessel on which swordfish are possessed in excess of the recreational retention limits intends to sell the swordfish.

(2) The only valid commercial Federal vessel permits for swordfish are those

that have been issued under the limited access program consistent with the provisions under paragraphs (l) and (m) of this section.

* * * * *

(h) * * *

(2) *Limited access permits for swordfish and shark.* See paragraph (l) of this section for transfers of LAPs for shark and swordfish. See paragraph (m) of this section for renewals of LAPs for shark and swordfish.

* * * * *

(l) * * *

(1) *General.* A permit issued under this section is not transferable or assignable to another vessel or owner or dealer; it is valid only for the vessel or owner or dealer to whom it is issued. If a person acquires a vessel or dealership and wants to conduct activities for which a permit is required, that person must apply for a permit in accordance with the provisions of paragraph (h) of this section or, if the acquired vessel is permitted in either the shark, swordfish, or tuna longline fishery, in accordance with paragraph (1)(2) of this section. If the acquired vessel or dealership is currently permitted, an application must be accompanied by the original permit, by a copy of a signed bill of sale or equivalent acquisition papers, and the appropriate workshop certificates as specified in § 635.8.

(2) * * *

(i) Subject to the restrictions on upgrading the harvesting capacity of permitted vessels in paragraph (l)(2)(ii) of this section and to the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section, an owner may transfer a shark or swordfish LAP or an Atlantic Tunas Longline category permit to another vessel that he or she owns or to another person. Directed handgear LAPs for swordfish may be transferred to another vessel but only for use with handgear and subject to the upgrading restrictions in paragraph (l)(2)(ii) of this section and the limitations on ownership of permitted vessels in paragraph (l)(2)(iii) of this section. Incidental catch LAPs are not subject to the requirements specified in paragraphs (l)(2)(ii) and (l)(2)(iii) of this section.

(ii) * * *

(B) Subsequent to the issuance of a limited access permit, the vessel's horsepower may be increased only once, relative to the baseline specifications of the vessel initially issued the LAP, whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel initially issued the LAP.

(C) Subsequent to the issuance of a limited access permit, the vessel's length overall, gross registered tonnage, and net tonnage may be increased only once, relative to the baseline specifications of the vessel initially issued the LAP, whether through refitting, replacement, or transfer. An increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel initially issued the LAP. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

* * * * *

(viii) As specified in paragraph (f)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain swordfish for commercial purposes. Accordingly, a LAP for swordfish obtained by transfer without either a directed or incidental catch shark LAP or an Atlantic tunas Longline category permit will not entitle an owner or operator to use a vessel to fish in the swordfish fishery.

(ix) As specified in paragraph (d)(4) of this section, a directed or incidental LAP for swordfish, a directed or an incidental catch LAP for shark, and an Atlantic Tunas Longline category permit are required to retain Atlantic tunas taken by pelagic longline gear. Accordingly, an Atlantic Tunas Longline category permit obtained by transfer without either a directed or incidental catch swordfish or shark LAP will not entitle an owner or operator to use the permitted vessel to fish in the Atlantic tunas fishery with pelagic longline gear.

(m) * * *

(1) *General.* Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS Angling, HMS Charter/Headboat, tunas, shark, or swordfish vessel permit. Except as specified in the instructions for automated renewals, persons must submit a renewal application to NMFS, along with a copy of the applicable valid workshop certificate or certificates, if required pursuant to § 635.8, at an address designated by NMFS, at least 30 days before a permit's expiration to avoid a lapse of permitted status. NMFS will renew a permit if the specific requirements for the requested permit are met, including those described in paragraph(l)(2) of this section, all reports required under the Magnuson-Stevens Act and ATCA have been submitted, including those described in § 635.5 and § 300.185 of this title, the applicant is not subject to a permit sanction or denial under paragraph (a)(6) of this section, and the workshop requirements specified in § 635.8 are met.

(2) *Shark, swordfish, and tuna longline LAPs.* The owner of a vessel of the U.S. that fishes for, possesses, lands or sells shark or swordfish from the management unit, takes or possesses such shark or swordfish as incidental catch, or that fishes for Atlantic tunas with longline gear must have the applicable limited access permit(s) issued pursuant to the requirements in paragraphs (e) and (f) of this section. Only persons holding a non-expired limited access permit(s) in the preceding year are eligible to renew a limited access permit(s). Transferors may not renew limited access permits that have been transferred according to the procedures of paragraph (l) of this section.

■ 10. In § 635.5, paragraph (a)(4) is removed; paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively; and paragraphs (a)(1), (b)(2)(i)(A), (b)(2)(i)(B), (b)(3), (c)(2) and (d) are revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(1) *Logbooks.* If an owner of an HMS charter/headboat vessel, an Atlantic tunas vessel, a shark vessel, or a swordfish vessel, for which a permit has been issued under § 635.4(b), (d), (e), or (f), is selected for logbook reporting in writing by NMFS, he or she must maintain and submit a fishing record on a logbook form specified by NMFS. Entries are required regarding the vessel's fishing effort and the number of fish landed and discarded. Entries on a day's fishing activities must be entered on the logbook form within 48 hours of completing that day's activities or before offloading, whichever is sooner. The owner or operator of the vessel must submit the logbook form(s) postmarked within 7 days of offloading all Atlantic HMS. If no fishing occurred during a calendar month, a no-fishing form so stating must be submitted postmarked no later than 7 days after the end of that month. If an owner of an HMS charter/headboat vessel, Atlantic tunas vessel, shark vessel, or swordfish vessel, permitted under § 635.4(b), (d), (e), or (f), is selected in writing by NMFS to complete the cost-earnings portion of the logbook(s), the owner or operator must maintain and submit the cost-

earnings portion of the logbook postmarked no later than 30 days after completing the offloading for each trip fishing for Atlantic HMS during that calendar year, and submit the Atlantic Highly Migratory Species Annual Expenditures form(s) postmarked no later than the date specified on the form of the following year.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) *Landing reports.* Each dealer with a valid Atlantic tunas permit issued under § 635.4 must submit a completed landing report on a form available from NMFS for each BFT received from a U.S. fishing vessel. Such report must be submitted by electronic facsimile (fax) or, once available, via the Internet, to a number or a web address designated by NMFS not later than 24 hours after receipt of the BFT. A landing report must indicate the name and permit number of the vessel that landed the BFT and must be signed by the permitted vessel's owner or operator immediately upon transfer of the BFT. The dealer must inspect the vessel's permit to verify that the required vessel name and vessel permit number as listed on the permit are correctly recorded on the landing report and to verify that the vessel permit has not expired.

(B) *Bi-weekly reports.* Each dealer with a valid Atlantic tunas permit issued under § 635.4 must submit a bi-weekly report on forms available from NMFS for BFT received from U.S. vessels. For BFT received from U.S. vessels on the 1st through the 15th of each month, the dealer must submit the bi-weekly report form to NMFS postmarked or, once available, electronically submitted via the Internet not later than the 25th of that month. Reports of BFT received on the 16th through the last day of each month must be postmarked or, once available, electronically submitted via the Internet not later than the 10th of the following month.

* * * * *

(3) *Recordkeeping.* Dealers must retain at their place of business a copy of each report required under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(i) of this section for a period of 2 years from the date on which each report was required to be submitted.

(c) * * *

(2) *Billfish and North Atlantic swordfish.* The owner, or the owner's designee, of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, and Atlantic sailfish, and all non-tournament and non-commercial landings of North Atlantic swordfish to NMFS by calling a number designated by NMFS within 24 hours of the landing. For telephone reports, the owner, or the owners designee, must provide a contact phone number so that a NMFS designee can call the vessel owner, or the owner's designee, for follow up questions and to confirm the reported landing. The telephone landing report has not been completed unless the vessel owner, or the owner's designee, has received a confirmation number from a NMFS designee.

* * * * *

(d) *Tournament operators.* For all tournaments that are conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, a tournament operator must register with the NMFS' HMS Management Division, at least 4 weeks prior to commencement of the tournament by submitting information on the purpose, dates, and location of the tournament to NMFS. A tournament is not registered unless the tournament operator has received a confirmation number from the NMFS' HMS Management Division. NMFS will notify the tournament operator in writing when a tournament has been selected for reporting. Tournament operators that are selected to report must maintain and submit to NMFS a record of catch and effort on forms available from NMFS. Tournament operators must submit the completed forms to NMFS, at an address designated by NMFS, postmarked no later than the 7th day after the conclusion of the tournament, and must attach a copy of the tournament rules.

* * * * *

■ 11. In § 635.6, paragraphs (c)(1) and (c)(2) are revised to read as follows:

§ 635.6 Vessel and gear identification.

* * * * *

(c) * * *

(1) The owner or operator of a vessel for which a permit has been issued under § 635.4 and that uses handline, buoy gear, harpoon, longline, or gillnet, must display the vessel's name, registration number or Atlantic Tunas, HMS Angling, or HMS Charter/Headboat permit number on each float attached to a handline, buoy gear, or harpoon, and on the terminal floats and high-flyers (if applicable) on a longline or gillnet used by the vessel. The vessel's name or number must be at least 1 inch (2.5 cm) in height in block letters or arabic numerals in a color that contrasts with the background color of the float or high-flyer.

(2) An unmarked handline, buoy gear, harpoon, longline, or gillnet, is illegal and may be disposed of in an appropriate manner by NMFS or an authorized officer.

* * * * *

■ 12. Add § 635.8 under subpart A to read as follows:

§ 635.8 Workshops.

(a) *Protected species release, disentanglement, and identification workshops.* (1) Both the owner and operator of a vessel that fishes with longline or gillnet gear must be certified by NMFS, or its designee, as having completed a workshop on the safe handling, release, and identification of protected species before a shark or swordfish limited access vessel permit, pursuant to § 635.4(e) and (f), is renewed in 2007. For the purposes of this section, it is a rebuttable presumption that a vessel fishes with longline or gillnet gear if: longline or gillnet gear is onboard the vessel; logbook reports indicate that longline or gillnet gear was used on at least one trip in the preceding year; or, in the case of a permit transfer to new owners that occurred less than a year ago, logbook reports indicate that longline or gillnet gear was used on at least one trip since the permit transfer.

(2) NMFS, or its designee, will issue a protected species safe handling, release, and identification workshop certificate to any person who completes a protected species safe handling, release, and identification workshop. If an owner owns multiple vessels, NMFS will issue a certificate for each vessel that the owner owns upon successful completion of one workshop. An owner who is also an operator will be issued multiple certificates, one as the owner of the vessel and one as the operator.

(3) The owner of a vessel that fishes with longline or gillnet gear, as specified in paragraph (a)(1) of this section, is required to possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that vessel owner. A copy of a valid protected species safe handling, release, and identification workshop certificate issued to the vessel owner for a vessel that fishes with longline or gillnet gear must be included in the application package to renew or obtain a shark or swordfish limited access permit.

(4) An operator that fishes with longline or gillnet gear as specified in paragraph (a)(1) of this section must

possess on board the vessel a valid protected species safe handling, release, and identification workshop certificate issued to that operator, in addition to a certificate issued to the vessel owner.

(5) All owners and operators that attended and successfully completed industry certification workshops, held on April 8, 2005, in Orlando, FL, and on June 27, 2005, in New Orleans, LA, as documented by workshop facilitators, will automatically receive valid protected species safe handling, release, and identification workshop certificates issued by NMFS no later than December 31, 2006.

(b) *Atlantic shark identification workshops.* (1) As of December 31, 2007, all Federal Atlantic shark dealers permitted or required to be permitted pursuant to § 635.4(g)(2), or a proxy for each place of business as specified in paragraph (b)(4) of this section, must be certified by NMFS, or its designee, as having completed an Atlantic shark identification workshop.

(2) NMFS, or its designee, will issue an Atlantic shark identification workshop certificate to any person who completes an Atlantic shark identification workshop.

(3) Dealers who own multiple businesses and who attend and successfully complete the workshop will be issued a certificate for each place of business that is permitted to receive sharks pursuant to § 635.4(g)(2).

(4) Dealers may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate a proxy from each place of business covered by the dealer's permit issued pursuant to § 635.4(g)(2). The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business covered by the shark dealer permit must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid Atlantic shark identification workshop certificate at each place of business. A copy of this certificate issued to the dealer or proxy must be included in the dealer's application package to obtain or renew a shark dealer permit. If multiple businesses are authorized to receive sharks under the dealer's permit, a copy of the workshop certificate for each business must be included in the shark dealer permit renewal application package.

(c) *Terms and conditions.* (1) Certificates, as described in paragraphs (a) and (b) of this section, are valid for three calendar years. All certificates must be renewed prior to the expiration date on the certificate.

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a) of this section, the vessel owner may not renew a shark or swordfish limited access permit, issued pursuant to § 635.4(e) or (f), without submitting a valid protected species workshop certificate with the permit renewal application.

(3) A vessel that fishes with longline or gillnet gear as described in paragraph (a) of this section and that has been, or should be, issued a valid limited access permit pursuant to § 635.4(e) or (f), may not fish unless a valid protected species safe handling, release, and identification workshop certificate has been issued to both the owner and operator of that vessel.

(4) An Atlantic shark dealer may not receive, purchase, trade, or barter for Atlantic shark unless a valid Atlantic shark identification workshop certificate is on the premises of each business listed under the shark dealer permit. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a valid Atlantic shark identification workshop certificate has been submitted with permit renewal application. If the dealer is not certified, the dealer must submit a copy of a proxy certificate for each place of business listed on the shark dealer permit.

(5) A vessel owner, operator, shark dealer, or proxy for a shark dealer who is issued either a protected species workshop certificate or an Atlantic HMS identification workshop certificate may not transfer that certificate to another person.

(6) Vessel owners issued a valid protected species safe handling, release, and identification workshop certificate may request, in the application for permit transfer per § 635.4(l)(2), additional protected species safe handling, release, and identification workshop certificates for additional vessels that they own. Shark dealers may request from NMFS additional Atlantic shark identification workshop certificates for additional places of business authorized to receive sharks that they own as long as they, and not a proxy, were issued the certificate. All certificates must be renewed prior to the date of expiration on the certificate.

(7) To receive either the protected species safe handling, release, and identification workshop certificate or Atlantic shark identification workshop certificate, persons required to attend the workshop must show a copy of their HMS permit, as well as proof of identification to NMFS or NMFS' designee at the workshop. If a permit holder is a corporation, partnership, association, or any other entity, the individual attending on behalf of the permit holder must show proof that he or she is the permit holder's agent and a copy of the HMS permit to NMFS or NMFS' designee at the workshop. For proxies attending on behalf of a shark dealer, the proxy must have documentation from the shark dealer acknowledging that the proxy is attending the workshop on behalf of the Atlantic shark dealer and must show a copy of the Atlantic shark dealer permit to NMFS or NMFS' designee at the workshop.

■ 13. In § 635.20, paragraph (d)(4) is added to read as follows:

§ 635.20 Size limits.

* * * * *

(d) * * *

(4) The Atlantic blue and white marlin minimum size limits, specified in paragraphs (d)(1) and (d)(2) of this section, may be adjusted to sizes between 117 and 138 inches (297.2 and 350.5 cm) and 70 and 79 inches (177.8 and 200.7 cm), respectively, to achieve, but not exceed, the annual Atlantic marlin landing limit specified in § 635.27(d). Minimum size limit increases will be based upon a review of landings, the period of time remaining in the current fishing year, current and historical landing trends, and any other relevant factors. NMFS will adjust the minimum size limits specified in this section by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall the adjustments be effective less than 14 calendar days after the date of publication. The adjusted minimum size limits will remain in effect through the end of the applicable fishing year or until otherwise adjusted.

* * * * *

■ 14. In § 635.21, paragraphs (a)(2), (a)(4), (b), (c)(1), (c)(2)(ii), (c)(2)(iii), (c)(2)(iv), (c)(2)(v) introductory text, (e)(1) introductory text, (e)(1)(i), (e)(1)(ii), (e)(1)(iii), (e)(2)(i), (e)(2)(ii),

and (e)(4)(iii) are revised; and paragraphs (d)(4), (e)(2)(iii), and (f) are added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(2) If a billfish is caught by a hook and not retained, the fish must be released by cutting the line near the hook or by using a dehooking device, in either case without removing the fish from the water.

* * * * *

(4) *Area closures for all Atlantic HMS fishing gears.* (i) No person may fish for, catch, possess, or retain any Atlantic highly migratory species or anchor a fishing vessel that has been issued a permit or is required to be permitted under this part, in the areas designated at § 622.34(d) of this chapter.

(ii) From November through April of each year until June 16, 2010, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson closed area or the Steamboat Lumps closed area, as defined in § 635.2.

(iii) From May through October of each year until June 16, 2010, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson or the Steamboat Lumps closed areas except for surface trolling, as specified below under paragraph (a)(4)(iv) of this section.

(iv) For the purposes of paragraph (a)(4)(iii) of this section, surface trolling is defined as fishing with lines trailing behind a vessel which is in constant motion at speeds in excess of four knots with a visible wake. Such trolling may not involve the use of down riggers, wire lines, planers, or similar devices.

(b) *General.* No person may fish for, catch, possess, or retain any Atlantic HMS with gears other than the primary gears specifically authorized in this part. Consistent with paragraphs (a)(1) and (a)(2) of this section, secondary gears may be used at boat side to aid and assist in subduing, or bringing on board a vessel, Atlantic HMS that have first been caught or captured using primary gears. For purposes of this part, secondary gears include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc. Secondary gears may not be used to capture, or attempt to capture, free-swimming or undersized HMS. Except as specified in this paragraph (b), a vessel using or having onboard in the Atlantic Ocean any unauthorized gear may not possess an Atlantic HMS on board.

(c) * * *

(1) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (c)(2) of this section and has bottom longline gear onboard, the vessel may not, at any time, possess or land any pelagic species listed in Table 2 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

(2) * * *

(ii) In the Charleston Bump closed area from February 1 through April 30 each calendar year;

(iii) In the East Florida Coast closed area at any time;

(iv) In the Desoto Canyon closed area at any time;

(v) In the Northeast Distant gear restricted area at any time, unless persons onboard the vessel comply with the following:

* * * * *

(d) * * *

(4) If a vessel issued or required to be issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section and has pelagic longline gear onboard, the vessel may not, at any time, possess or land any demersal species listed in Table 3 of Appendix A to this part in excess of 5 percent, by weight, of the total weight of pelagic and demersal species possessed or landed, that are listed in Tables 2 and 3 of Appendix A to this part.

(e) * * *

(1) *Atlantic tunas.* A person that fishes for, retains, or possesses an Atlantic bluefin tuna may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the category for which the Atlantic tunas or HMS permit has been issued for such vessel. Primary gears are the gears specifically authorized in this section. When fishing for Atlantic tunas other than BFT, primary gear authorized for any Atlantic Tunas permit category may be used, except that purse seine gear may be used only on board vessels permitted in the Purse Seine category and pelagic longline gear may be used only on board vessels issued an Atlantic Tunas Longline category tuna permit, a LAP other than handgear for swordfish, and a LAP for sharks.

(i) *Angling.* Speargun (for BAYS tunas only), and rod and reel (including downriggers)and handline (for all tunas).

(ii) *Charter/Headboat.* Speargun (for recreational BAYS tuna fishery only), and rod and reel (including downriggers), bandit gear, and handline (for all tunas).

(iii) *General.* Rod and reel (including downriggers), handline, harpoon, and bandit gear.

* * * * *

(2) * * *

(i) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess a blue marlin or white marlin in, or take a blue marlin or a white marlin from, its management unit. Blue marlin or white marlin may only be harvested by rod and reel.

(ii) Only persons who have been issued a valid HMS Angling or valid Charter/Headboat permit, or who have been issued a valid Atlantic Tunas General category permit and are participating in a tournament as provided in § 635.4(c) of this part, may possess or take a sailfish shoreward of the outer boundary of the Atlantic EEZ. Sailfish may only be harvested by rod and reel.

(iii) After December 31, 2006, persons who have been issued or are required to be issued a permit under this part and who are participating in a ''tournament'', as defined in § 635.2, that bestows points, prizes, or awards for Atlantic billfish must deploy only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, and may not deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination.

* * * * *

(4) * * *

(iii) A person aboard a vessel issued or required to be issued a valid directed handgear LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. A swordfish will be deemed to have been harvested by longline when the fish is on board or offloaded from a vessel using or having on board longline gear. Vessels that have been issued or that are required to have been issued a valid directed or handgear swordfish LAP under this part and that are utilizing buoy gear may not possess or deploy more than 35 floatation devices, and may not deploy more than 35 individual buoys gears per vessel. Buoy gear must be constructed and deployed so that the hooks and/or gangions are attached to the vertical portion of the mainline. Floatation devices may be attached to one but not both ends of the mainline, and no hooks

or gangions may be attached to any floatation device or horizontal portion of the mainline. If more than one floatation device is attached to a buoy gear, no hook or gangion may be attached to the mainline between them. Individual buoy gears may not be linked, clipped, or connected together in any way. Buoy gears must be released and retrieved by hand. All deployed buoy gear must have some type of monitoring equipment affixed to it including, but not limited to, radar reflectors, beeper devices, lights, or reflective tape. If only reflective tape is affixed, the vessel deploying the buoy gear must possess an operable spotlight capable of illuminating deployed floatation devices. If a gear monitoring device is positively buoyant and rigged to be attached to a fishing gear, it is included in the 35 floatation device vessel limit and must be marked appropriately.

* * * * *

(f) *Speargun fishing gear.* Speargun fishing gear may only be utilized when recreational fishing for Atlantic BAYS tunas and only from vessels issued either a valid HMS Angling or valid HMS Charter/Headboat permit. Persons fishing for Atlantic BAYS tunas using speargun gear, as specified in paragraph (e)(1) of this section, must be physically in the water when the speargun is fired or discharged, and may freedive, use SCUBA, or other underwater breathing devices. Only free-swimming BAYS tunas, not those restricted by fishing lines or other means, may be taken by speargun fishing gear. ''Powerheads'', as defined at § 600.10 of this chapter, or any other explosive devices, may not be used to harvest or fish for BAYS tunas with speargun fishing gear.

■ 15. In § 635.22, paragraphs (b) and (c) are revised to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(b) *Billfish.* No longbill spearfish from the management unit may be taken, retained, or possessed shoreward of the outer boundary of the EEZ.

(c) *Sharks.* One shark from either the large coastal, small coastal, or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(e). In addition, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel. No prohibited sharks, including parts or pieces of prohibited sharks, from the management unit, which are listed in Table 1 of Appendix A to this part under prohibited sharks, may be retained. The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued an Atlantic shark LAP under § 635.4. If an Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks may be applied to persons aboard a vessel issued an Atlantic shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire fishing trip.

* * * * *

■ 16. In § 635.23, paragraphs (a)(4), (b)(3), and (f)(3) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(a) * * *

(4) To provide for maximum utilization of the quota for BFT, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel. Such increase or decrease will be based on the criteria provided under § 635.27(a)(8). NMFS will adjust the daily retention limit specified in paragraph (a)(2) of this section by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the **Federal Register**, except that previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26.

(b) * * *

(3) *Changes to retention limits.* To provide for maximum utilization of the quota for BFT over the longest period of time, NMFS may increase or decrease the retention limit for any size class of BFT, or change a vessel trip limit to an angler trip limit and vice versa. Such increase or decrease in retention limit will be based on the criteria provided under § 635.27 (a)(8). The retention limits may be adjusted separately for persons aboard a specific vessel type, such as private vessels, headboats, or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be effective less than 3 calendar days after the date of filing with the Office of the **Federal Register**.

* * * * *

(f) * * *

(3) Pelagic longline vessels fishing in the Northeast Distant gear restricted area, under the exemption specified at § 635.21(c)(2)(v), may retain all BFT taken incidental to fishing for other species while in that area up to the available quota as specified in § 635.27(a), notwithstanding the retention limits and target catch requirements specified in paragraph (f)(1) of this section. Once the available quota as specified in § 635.27(a) has been attained, the target catch requirements specified in paragraph (f)(1) of this section apply.

* * * * *

■ 17. In § 635.24, paragraphs (a)(1), (a)(2), (b)(1), and the first sentence in paragraph (b)(2) are revised; and paragraph (a)(3) is added to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(1) A person who owns or operates a vessel that has been issued a directed LAP for shark may retain, possess or land no more than 4,000 lb (1,814 kg) dw of LCS per trip.

(2) A person who owns or operates a vessel that has been issued an incidental catch LAP for sharks may retain, possess or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip.

(3) A person who owns or operates a vessel that has been issued an incidental or directed LAP for sharks may not retain, possess, land, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks.

(b) * * *

(1) Persons aboard a vessel that has been issued an incidental LAP for swordfish may retain, possess, or land no more than two swordfish per trip in or from the Atlantic Ocean north of 5° N. lat.

(2) Persons aboard a vessel in the squid trawl fishery that has been issued an incidental LAP for swordfish may retain, possess, or land no more than five swordfish per trip in or from the Atlantic Ocean north of 5° N. lat. * * *

■ 18. In § 635.27, paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(i), (a)(1)(iii), (a)(2), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4)(i), (a)(4)(iii), (a)(5), (a)(6), (a)(7)(i), (a)(7)(ii), (a)(8), (a)(9), (b)(1) introductory text, (c)(1)(i)(A), (c)(1)(i)(C), (c)(1)(ii), (c)(2)(i),

(c)(2)(iv), and (c)(3) are revised; paragraph (a)(7)(iii) is removed; and paragraphs (a)(10) and (d) are added to read as follows:

§ 635.27 Quotas.

(a) *BFT.* Consistent with ICCAT recommendations, NMFS will subtract any allowance for dead discards from the fishing year's total U.S. quota for BFT that can be caught, and allocate the remainder to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The total landing quota will be divided among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories. Consistent with these allocations and other applicable restrictions of this part, BFT may be taken by persons aboard vessels issued Atlantic Tunas permits, HMS Angling permits, or HMS Charter/Headboat permits. The BFT baseline annual landings quota is 1,464.6 mt, not including an additional annual 25 mt allocation provided in paragraph (a)(3) of this section. Allocations of this baseline annual landings quota will be made according to the following percentages: General - 47.1 percent (689.8 mt); Angling - 19.7 percent (288.6 mt), which includes the school BFT held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon - 3.9 percent (57.1 mt); Purse Seine - 18.6 percent (272.4 mt); Longline - 8.1 percent (118.6 mt), which does not include the additional annual 25 mt allocation provided in paragraph (a)(3) of this section; and Trap - 0.1 percent (1.5 mt). The remaining 2.5 percent (36.6 mt) of the baseline annual landings quota will be held in reserve for inseason or annual adjustments based on the criteria in paragraph (a)(8) of this section. NMFS may apportion a landings quota allocated to any category to specified fishing periods or to geographic areas and will make annual adjustments to quotas, as specified in paragraph (a)(10) of this section. BFT landings quotas are specified in whole weight.

(1) *General category landings quota.* In accordance with the framework procedures of the HMS FMP, NMFS will publish in the **Federal Register**, prior to the beginning of each fishing year or as early as feasible, the General category effort control schedule, including daily retention limits and restricted-fishing days.

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category landings quota. See § 635.23(c)(3) regarding landings by vessels with an HMS Charter/Headboat permit that are counted against the baseline General category landings quota. The amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the baseline General category landings quota is 47.1 percent (689.8 mt) of the overall baseline annual BFT landings quota, and is apportioned as follows:

(A) June 1 through August 31 - 50 percent (344.9 mt);

(B) September 1 through September 30 - 26.5 percent (182.8 mt);

(C) October 1 through November 30 - 13 percent (89.7 mt);

(D) December 1 through December 31 - 5.2 percent (35.9 mt); and

(E) January 1 through January 31 - 5.3 percent (36.5 mt).

* * * * *

(iii) When the coastwide General category fishery has been closed in any quota period specified under paragraph (a)(1)(i) of this section, NMFS will publish a closure action as specified in § 635.28. The subsequent time-period subquota will automatically open in accordance with the dates specified under paragraph (a)(1)(i) of this section.

(2) *Angling category landings quota.* In accordance with the framework procedures of the HMS FMP, prior to each fishing year or as early as feasible, NMFS will establish the Angling category daily retention limits. The total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 19.7 percent (288.6 mt) of the overall annual U.S. BFT baseline landings quota. No more than 2.3 percent (6.6 mt) of the annual Angling category landings quota may be large medium or giant BFT. In addition, over each 4–consecutive-year period (starting in 1999, inclusive), no more than 8 percent of the overall U.S. BFT baseline landings quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category landings quota includes the amount of school BFT held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) Under paragraph (a)(7)(ii) of this section, 52.8 percent (51.3 mt) of the school BFT Angling category landings quota, after adjustment for the school BFT quota held in reserve, may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining quota (45.9 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(ii) An amount equal to 52.8 percent (86.0 mt) of the large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining quota (76.8 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(iii) An amount equal to 66.7 percent (4.4 mt) of the large medium and giant BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining quota (2.2 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(3) *Longline category quota.* The total amount of large medium and giant BFT that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent (118.6 mt) of the overall U.S. BFT quota. No more than 60.0 percent of the Longline category quota may be allocated for landing in the area south of 31°00′ N. lat. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area as specified at § 635.23(f)(3).

(4) * * *

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Purse Seine category Atlantic Tunas permits is 18.6 percent (272.4 mt) of the overall U.S. BFT baseline landings quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be filed less than 14 calendar days prior to July 15.

* * * * *

(iii) On or about May 1 of each year, NMFS will make equal allocations of the available size classes of BFT among purse seine vessel permit holders so requesting, adjusted as necessary to account for underharvest or overharvest by each participating vessel or the vessel it replaces from the previous fishing year, consistent with paragraph (a)(10)(i) of this section. Such allocations are freely transferable, in whole or in part, among vessels that have Purse Seine category Atlantic

Tunas permits. Any purse seine vessel permit holder intending to land bluefin tuna under an allocation transferred from another purse seine vessel permit holder must provide written notice of such intent to NMFS, at an address designated by NMFS, 3 days before landing any such bluefin tuna. Such notification must include the transfer date, amount (in metric tons) transferred, and the permit numbers of vessels involved in the transfer. Trip or seasonal catch limits otherwise applicable under § 635.23(e) are not affected by transfers of bluefin tuna allocation. Purse seine vessel permit holders who, through landing and/or transfer, have no remaining bluefin tuna allocation may not use their permitted vessels in any fishery in which Atlantic bluefin tuna might be caught, regardless of whether bluefin tuna are retained.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 3.9 percent (57.1 mt) of the overall U.S. BFT baseline quota. The Harpoon category fishery closes on November 15 each year.

(6) *Trap category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 0.1 percent (1.5 mt) of the overall U.S. BFT baseline quota.

(7) * * *

(i) The total amount of BFT that is held in reserve for inseason or annual adjustments and fishery-independent research using quotas or subquotas is 2.5 percent (36.6 mt) of the overall U.S. BFT baseline quota. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of this reserve for inseason or annual adjustments to any category quota in the fishery.

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (22.0 mt) of the total school BFT quota for the Angling category as described under paragraph (a)(2) of this section. This is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school BFT held in reserve for inseason or annual adjustments to the Angling category.

(8) *Determination criteria.* NMFS will file with the Office of the **Federal Register** for publication notification of any inseason or annual adjustments. Before making any adjustment, NMFS will consider the following criteria and other relevant factors:

(i) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock.

(ii) The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made.

(iii) The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year.

(iv) The estimated amounts by which quotas for other gear categories of the fishery might be exceeded.

(v) Effects of the adjustment on BFT rebuilding and overfishing.

(vi) Effects of the adjustment on accomplishing the objectives of the fishery management plan.

(vii) Variations in seasonal distribution, abundance, or migration patterns of BFT.

(viii) Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota.

(ix) Review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

(9) *Inseason adjustments.* Within a fishing year, NMFS may transfer quotas among categories or, as appropriate, subcategories, based on the criteria in paragraph (a)(8) of this section. NMFS may transfer inseason any portion of the remaining quota of a fishing category to any other fishing category or to the reserve as specified in paragraph (a)(7) of this section.

(10) *Annual adjustments.* (i) If NMFS determines, based on landings statistics and other available information, that a BFT quota for any category or, as appropriate, subcategory has been exceeded or has not been reached, with the exception of the Purse Seine category, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year. These adjustments would be made provided that the underharvest being carried forward does not exceed 100 percent of each category's baseline allocation specified in paragraph (a) of this section, and the total of the adjusted category quotas and the reserve are consistent with ICCAT recommendations. For the Purse Seine category, if NMFS determines, based on landings statistics and other available information, that a purse seine vessel's allocation, as adjusted, has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that vessel's allocation for the following fishing year. Purse seine vessel adjustments would take place provided that the underharvest being carried forward does not exceed 100 percent of the purse seine category baseline allocation. Any of the unharvested quota amounts being carried forward, as described in this paragraph, that exceed the 100 percent limit will be transferred to the reserve, or another domestic quota category provided the transfers are consistent with paragraph (a)(8) of this section.

(ii) NMFS may allocate any quota remaining in the reserve at the end of a fishing year to any fishing category, provided such allocation is consistent with the criteria specified in paragraph (a)(8) of this section.

(iii) Regardless of the estimated landings in any year, NMFS may adjust the annual school BFT quota to ensure that the average take of school BFT over each 4–consecutive-year period beginning in the 1999 fishing year does not exceed 8 percent by weight of the total U.S. BFT baseline quota for that period.

(iv) If NMFS determines that the annual dead discard allowance has been exceeded in one fishing year, NMFS shall subtract the amount in excess of the allowance from the amount of BFT that can be landed in the subsequent fishing year by those categories accounting for the dead discards. If NMFS determines that the annual dead discard allowance has not been reached, NMFS may add one-half of the remainder to the amount of BFT that can be landed in the subsequent fishing year. Such amount may be allocated to individual fishing categories or to the reserve.

(v) NMFS will file any annual adjustment with the Office of the **Federal Register** for publication and specify the basis for any quota reductions or increases made pursuant to this paragraph (a)(10).

(b) * * *

(1) *Commercial quotas.* The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section apply to sharks harvested from the management unit, regardless of where harvested. Commercial quotas are specified for each of the management groups of large coastal sharks, small coastal sharks, and pelagic sharks. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of Appendix A to this part, may be

retained except as authorized under § 635.32.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel that possesses a directed or handgear swordfish limited access permit will be counted against the directed fishery quota. The annual fishery quota, not adjusted for over- or underharvests, is 2,937.6 mt dw for each fishing year beginning June 1, 2004. The annual quota is subdivided into two equal semiannual quotas of 1,468.8 mt dw: one for June 1 through November 30, and the other for December 1 through May 31 of the following year. After December 31, 2007, the annual quota is subdivided into two equal semiannual quotas: one for January 1 through June 30, and the other for July 1 through December 31.

* * * * *

(C) All swordfish discarded dead from U.S. fishing vessels, regardless of whether such vessels are permitted under this part, shall be counted against the annual directed fishing quota.

* * * * *

(ii) *South Atlantic swordfish.* The annual directed fishery quota for the South Atlantic swordfish stock for the 2005 fishing year is 75.2 mt dw. For the 2006 fishing year and thereafter, the annual directed fishery quota for south Atlantic swordfish is 90.2 mt dw. The entire quota for the South Atlantic swordfish stock is reserved for vessels with pelagic longline gear onboard and that possess a directed fishery permit for swordfish. No person may retain swordfish caught incidental to other fishing activities or with other fishing gear in the Atlantic Ocean south of 5 degrees North latitude.

(2) * * *

(i) NMFS may adjust the July 1 through December 31 semiannual directed fishery quota or, as applicable, the reserve category, to reflect actual directed fishery and incidental fishing category catches during the January 1 through June 30 semiannual period.

* * * * *

(iv) NMFS will file with the Office of the **Federal Register** for publication any inseason swordfish quota adjustment and its apportionment to fishing categories or to the reserve made under paragraph (c)(2) of this section.

(3) *Annual adjustments.* (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the **Federal Register** for publication any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. NMFS will provide an opportunity for public comment.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the **Federal Register** for publication any adjustment or apportionment made under this paragraph (c)(3)(ii).

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section will be subtracted from the landings quota in the following fishing year or from the reserve category. NMFS will file with the Office of the **Federal Register** for publication any adjustment made under this paragraph (c)(3)(iii).

(d) *Atlantic blue and white marlin.* (1) Effective January 1, 2007, and consistent with ICCAT recommendations and domestic management objectives, NMFS will establish the annual landings limit of Atlantic blue and white marlin to be taken, retained, or possessed by persons and vessels subject to U.S. jurisdiction. For the year 2007 and thereafter, unless adjusted under paragraph (d)(2) of this section or by ICCAT recommendation, this annual landings limit is 250 Atlantic blue and white marlin, combined. Should the U.S. recreational Atlantic marlin landing limit be adjusted by an ICCAT recommendation, NMFS will file a notice identifying the new landing limit with the Office of the **Federal Register** for publication prior to the start of the next fishing year or as early as possible.

(2) Consistent with ICCAT recommendations and domestic management objectives, and based on landings statistics and other information as appropriate, if NMFS determines that aggregate landings of Atlantic blue and white marlin exceeded the annual landings limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS will subtract any overharvest from the landings limit for the following fishing year. Additionally, if NMFS determines that aggregate landings of Atlantic blue and white marlin were below the annual landings limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS may add any underharvest, or portion thereof, to the landings limit for the following fishing year. Such adjustments to the annual recreational marlin landings limit, as specified in paragraph (d)(1) of this section, if necessary, will be filed with the Office of the **Federal Register** for publication prior to the start of the next fishing year or as early as possible.

(3) When the annual marlin landings limit specified in paragraph (d)(1) or, if adjusted, as specified in paragraph (d)(2) of this section is reached or projected to be reached, based upon a review of landings, the period of time remaining in the current fishing year, current and historical landings trends, and any other relevant factors, NMFS will file for publication with the Office of the **Federal Register** an action restricting fishing for Atlantic blue and white marlin to catch-and-release fishing only. In no case shall such adjustment be effective less than 14 calendar days after the date of publication. From the effective date and time of such action until additional landings become available, no blue or white marlin from the management unit may be taken, retained, or possessed.

■ 19. In § 635.28, paragraphs (a)(1) and (a)(3) are revised to read as follows:

§ 635.28 Closures.

(a) * * *

(1) When a BFT quota, other than the Purse Seine category quota specified in § 635.27(a)(4), is reached, or is projected to be reached, NMFS will file a closure notice with the Office of the **Federal Register** for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

* * * * *

(3) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes participants in another area from a reasonable opportunity to harvest any allocated domestic category quota, as stated in § 635.27(a), NMFS may close all or part of the fishery under that category. NMFS may reopen the fishery at a later date if NMFS determines that reasonable fishing opportunities are

available, e.g., BFT have migrated into the area or weather is conducive for fishing. In determining the need for any such interim closure or area closure, NMFS will also take into consideration the criteria specified in § 635.27(a)(8).

* * * * *

■ 20. In § 635.30, paragraph (c)(2) is revised to read as follows:

§ 635.30 Possession at sea and landing.

* * * * *

(c) * * *

(2) A person who owns or operates a vessel that has a valid Federal Atlantic commercial shark limited access permit may not fillet a shark at sea. A person may eviscerate and remove the head and fins, except for the second dorsal and anal fin, but must retain the fins with the dressed carcasses. The second dorsal and anal fin must remain on the shark until the shark is offloaded. Wet shark fins may not exceed 5 percent of the dressed weight of the carcasses on board a vessel or landed, in accordance with the regulations at part 600, subpart N, of this chapter.

* * * * *

■ 21. In § 635.31, paragraph (a)(1) is revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

(a) * * *

(1) A persons that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit, or a valid General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas issued under this part. However, no person may sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

* * * * *

■ 22. In § 635.34, paragraphs (a) and (b) are revised; and paragraph (d) is added to read as follows:

§ 635.34 Adjustment of management measures.

(a) NMFS may adjust the catch limits for BFT, as specified in § 635.23; the quotas for BFT, shark and swordfish, as specified in § 635.27; the marlin landing limit, as specified in § 635.27(d); and the minimum sizes for Atlantic blue and white marlin, as specified in § 635.20.

(b) In accordance with the framework procedures in the Highly Migratory Species Fishery Management Plan, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions or regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; workshop requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restriction; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

* * * * *

(d) When considering a framework adjustment to add, change, or modify time/area closures, NMFS will consider, consistent with the FMP, the Magnuson-Stevens Act, and other applicable law, but is not limited to, the following criteria: any Endangered Species Act related issues, concerns, or requirements, including applicable BiOps; bycatch rates of protected species, prohibited HMS, or non-target species both within the specified or potential closure area(s) and throughout the fishery; bycatch rates and post-release mortality rates of bycatch species associated with different gear types; new or updated landings, bycatch, and fishing effort data; evidence or research indicating that changes to fishing gear and/or fishing practices can significantly reduce bycatch; social and economic impacts; and the practicability of implementing new or modified closures compared to other bycatch reduction options. If the species is an ICCAT managed species, NMFS will also consider the overall effect of the U.S.'s catch on that species before implementing time/area closures.

■ 23. In § 635.71, paragraphs (a)(7), (a)(8), (a)(19), (a)(23), (a)(37), (a)(41), (a)(42), (a)(43), (a)(44), (b)(6), (b)(22), (c)(1), (c)(6), (d)(10), (d)(11), (e)(10), (e)(11), (e)(12), and (e)(15) are revised; and paragraphs (a)(48) through (a)(53), (b)(30) through (b)(35), (c)(7), (c)(8), (d)(14), (e)(16), and (e)(17) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(e) and (f) or § 635.32.

(8) Fail to make available for inspection an Atlantic HMS or its area of custody, as specified in § 635.5(e) and (f).

* * * * *

(19) Utilize secondary gears as specified in § 635.21(b) to capture, or attempt to capture, any undersized or free swimming Atlantic HMS, or fail to release a captured Atlantic HMS in the manner specified in § 635.21(a).

* * * * *

(23) Fail to comply with the restrictions on use of pelagic longline, bottom longline, gillnet, buoy gear, or speargun gear as specified in § 635.21(c), (d), (e)(3), (e)(4), or (f).

* * * * *

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear as required by § 635.5.

* * * * *

(41) Fail to immediately notify NMFS upon the termination of a chartering arrangement as specified in § 635.5(a)(5).

(42) Count chartering arrangement catches against quotas other than those defined as the Contracting Party of which the chartering foreign entity is a member as specified in § 635.5(a)(5).

(43) Fail to submit catch information regarding fishing activities conducted under a chartering arrangement with a foreign entity, as specified in § 635.5(a)(5).

(44) Offload charter arrangement catch in ports other than ports of the chartering Contracting Party of which the foreign entity is a member or offload catch without the direct supervision of the chartering foreign entity as specified in § 635.5(a)(5).

* * * * *

(48) Purchase any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(49) Sell any HMS that was offloaded from an individual vessel in excess of the retention limits specified in §§ 635.23 and 635.24.

(50) Fish without being certified for completion of a NMFS protected species

safe handling, release, and identification workshop, as required in § 635.8.

(51) Fish without having a valid protected species workshop certificates issued to the vessel owner and operator on board the vessel as required in § 635.8.

(52) Falsify a NMFS protected species workshop certificate or a NMFS Atlantic shark identification workshop certificate as specified at § 635.8.

(53) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ''buoy gear'', as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f).

(b) * * *

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a BFT, as specified in § 635.5(c)(1) or (c)(3).

* * * * *

(22) As the owner or operator of a purse seine vessel, fail to comply with the requirement for possession at sea and landing of BFT under § 635.30(a).

* * * * *

(30) Fish for any HMS, other than Atlantic BAYS tunas, with speargun fishing gear, as specified at § 635.21(f).

(31) Harvest or fish for BAYS tunas using speargun gear with powerheads, or any other explosive devices, as specified in § 635.21(f).

(32) Sell, purchase, barter for, or trade for an Atlantic BAYS tuna harvested with speargun fishing gear, as specified at § 635.31(a)(1).

(33) Fire or discharge speargun gear without being physically in the water, as specified at § 635.21(f).

(34) Use speargun gear to harvest a BAYS tuna restricted by fishing lines or other means, as specified at § 635.21(f).

(35) Use speargun gear to fish for BAYS tunas from a vessel that does not possess either a valid HMS Angling or HMS Charter/Headboat permit, as specified at § 635.21(f).

(c) * * *

(1) As specified in § 635.21(e)(2), retain a billfish harvested by gear other than rod and reel, or retain a billfish on board a vessel unless that vessel has been issued an Atlantic HMS Angling or Charter/Headboat permit or has been issued an Atlantic Tunas General category permit and is participating in a tournament in compliance with § 635.4(c).

* * * * *

(6) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a billfish, as specified in § 635.5(c)(2) or (c)(3).

(7) Deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination when participating in a tournament for, or including, Atlantic billfish, as specified in § 635.21(e)(2).

(8) Take, retain, or possess an Atlantic blue or white marlin when the fishery for these species has been restricted to catch and release fishing only, as specified in § 635.27(d).

(d) * * *

(10) Retain, possess, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, as specified under §§ 635.22(c), 635.24(a)(3), and 635.27(b)(1), or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d)(3).

(11) Receive, purchase, trade, or barter for Atlantic sharks without a valid Atlantic shark identification workshop certificate or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

* * * * *

(14) Receive, purchase, trade, or barter for Atlantic shark without making available for inspection, at each of the dealer's places of business authorized to receive shark, a valid Atlantic shark identification workshop certificate issued by NMFS in violation of § 635.8(b).

(e) * * *

(10) Fish for, catch, possess, retain, or land an Atlantic swordfish using, or captured on, ''buoy gear'' as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited access permit or a swordfish handgear limited access permit in accordance with § 635.4(f).

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed or swordfish handgear limited access permit category and utilizing buoy gear, to possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(e)(4)(iii).

(12) Fail to mark each buoy gear as required at § 635.6(c)(1).

* * * * *

(15) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category, fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (c)(3).

(16) Possess any HMS, other than Atlantic swordfish, harvested with buoy gear § 635.21(e).

(17) Fail to construct, deploy, or retrieve buoy gear as specified at § 635.21(e)(4)(iii).

■ 24. In Appendix A to part 635, revise Table 2 and add Table 3 to read as follows:

Appendix A to Part 635—Species Tables

* * * * *

TABLE 2 OF APPENDIX A TO PART 635—PELAGIC SPECIES

Albacore tuna, *Thunnus alalunga*
Bigeye tuna, *Thunnus obesus*
Blue shark, *Prionace glauca*
Bluefin tuna, *Thunnus thynnus*
Dolphin fish, *Coryphaena hippurus*
Oceanic whitetip shark, *Carcharhinus longimanus*
Porbeagle shark, *Lamna nasus*
Shortfin mako shark, *Isurus oxyrinchus*
Skipjack tuna, *Katsuwonus pelamis*
Swordfish, *Xiphias gladius*
Thresher shark, *Alopias vulpinus*
Wahoo, *Acanthocybium solandri*
Yellowfin tuna, *Thunnus albacares*

TABLE 3 OF APPENDIX A TO PART 635—DEMERSAL SPECIES

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
Black grouper, *Mycteroperca bonaci*
Blackfin snapper, *Lutjanus buccanella*
Blacknose shark, *Carcharhinus acronotus*
Blacktip shark, *Carcharhinus limbatus*
Blueline tilefish, *Caulolatilus microps*
Bonnethead shark, *Sphyrna tiburo*
Bull shark, *Carcharhinus leucas*
Cubera snapper, *Lutjanus cyanopterus*
Dog snapper, *Lutjanus jocu*
Finetooth shark, *Carcharhinus isodon*
Gag grouper, *Mycteroperca microlepis*
Lane snapper, *Lutjanus synagris*
Lemon shark, *Negaprion brevirostris*
Mangrove snapper, *Lutjanus griseus*
Marbled grouper, *Dermatolepis inermis*
Misty grouper, *Epinephelus mystacinus*
Mutton snapper, *Lutjanus analis*
Nurse shark, *Ginglymostoma cirratum*
Queen snapper, *Etelis oculatus*
Red grouper, *Epinephelus morio*
Red hind, *Epinephelus guttatus*
Red snapper, *Lutjanus campechanus*
Rock hind, *Epinephelus adscensionis*
Sand tilefish, *Malacanthus plumieri*
Sandbar shark, *Carcharhinus plumbeus*
Schoolmaster snapper, *Lutjanus apodus*
Silk snapper, *Lutjanus vivanus*
Snowy grouper, *Epinephelus niveatus*
Speckled hind, *Epinephelus drummondhayi*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*
Tilefish, *Lopholatilus chamaeleonticeps*
Vermilion snapper, *Rhomboplites aurorubens*
Warsaw grouper, *Epinephelus nigritus*
Yellowedge grouper, *Epinephelus flavolimbatus*
Yellowfin grouper, *Mycteroperca venenosa*
Yellowtail snapper, *Ocyurus chrysurus*

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October 2, 2006

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Alameda Whipsnake; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018AT93

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Alameda Whipsnake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the Alameda whipsnake (*Masticophis lateralis euryxanthus*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 154,834 acres (ac) (62,659 hectares (ha)) critical habitat are being designated for the taxon. The critical habitat is located in Alameda, Contra Costa, Santa Clara, and San Joaquin Counties, California.

DATES: This rule becomes effective on November 1, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825. The final rule and economic analysis are available via the Internet at *http://www.fws.gov/sacramento.*

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Listing Branch Chief, Sacramento Fish and Wildlife Office, at the above address (telephone 916/414–6600; facsimile 916/414–6712).

SUPPLEMENTARY INFORMATION:

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act (16 U.S.C. 1531 *et seq.*). In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 475 species, or 36 percent of the 1,310 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service.* In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public

comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

The Alameda whipsnake, also known as the Alameda striped racer, reaches an adult size of 3 to 5 feet (ft) (91 to 152 centimeters (cm)) in length and inhabits the inner coast range mostly in Contra Costa and Alameda Counties (Jennings 1983; McGinnis 1992; Swaim 1994), with additional occurrence records in San Joaquin and Santa Clara Counties (California Natural Diversity Database (CNDDB) 2006; Swaim 2004). Lizards, particularly the western fence lizard (*Sceloporus occidentalis*), are the primary prey of the Alameda whipsnake, however, the whipsnake's diet may include other prey items (*e.g.*, rattlesnakes and nesting birds) depending on an individual's size, sex, age, and location. Several individuals monitored by Swaim (1994, p. 50) for nearly an entire activity season appeared to maintain stable home ranges varying in area from 1.9 to 8.7 ha (5.0 to 21.5 ac). Movements of these individuals were multi-directional, and individual snakes returned to specific areas and retreat sites after long intervals of nonuse. Whipsnakes had one or more core areas (areas of concentrated use) within their home range as described above, centered on a scrub community; however, whipsnakes often ventured for periods of a few hours to weeks at a time into adjacent habitats, including grassland, oak savanna, and occasionally oak-bay woodland. Male whipsnakes extensively used grasslands during the mating season in spring. Female Alameda whipsnakes used grassland areas most extensively after mating, possibly in search of suitable egg-laying sites.

It is our intent to limit discussion in this final rule to new information or clarification or correction of earlier information. For more information on the Alameda whipsnake, please refer to the December 5, 1997 final listing rule (62 FR 64306), previous October 3, 2000 final critical habitat designation (65 FR 58933), and the October 18, 2005 proposed critical habitat designation (70 FR 60607).

Threats

Several factors can affect the mosaic nature of the habitat upon which the Alameda whipsnake depends. Fire suppression can alter the structure of Alameda whipsnake habitat by allowing plants to establish a closed canopy, resulting in more uniformly cool conditions that may affect the Alameda whipsnake as well as its lizard prey base. Infrequent catastrophic wildfires may result in losses of habitat and direct mortality of Alameda whipsnakes. Incompatible grazing practices such as overgrazing, or bulldozing and burning in preparing lands for grazing, can result in significant and long-term losses of the scrub component of the vegetation mosaic comprising Alameda whipsnake habitat. Construction and use of paved or unpaved roads and trails within largely unbroken tracts of habitat, for recreational or other purposes, may result in both incremental losses of Alameda whipsnake habitat and direct mortality of individual Alameda whipsnakes crushed by motorized or unmotorized vehicles. These threats render the remaining habitat less suitable for the Alameda whipsnake, and special management may be needed to address them.

Previous Federal Actions

On June 7, 2001, the Home Builders Association of Northern California and others filed a lawsuit in the United States Court for the Eastern District of California (Court) against the Service, challenging the final designation of critical habitat for the Alameda whipsnake (*Home Builders Association of Northern California et al.* v. *U.S. Fish and Wildlife Service et al.*, 268 F. Supp. 2d 1197). On May 9, 2003, the U.S. District Judge vacated and remanded the October 3, 2000, final rule designating critical habitat for the Alameda whipsnake and, on January 14, 2004, issued an order specifying a schedule for completion of a new final rule. Our proposed critical habitat for the Alameda whipsnake was published in the **Federal Register** on October 18, 2005 (70 FR 60607). A draft economic analysis of the proposed critical habitat was published in the **Federal Register** on May 4, 2006 (71 FR 26311).

For more information on previous Federal actions concerning the Alameda whipsnake, refer to the December 5, 1997, final listing rule published in the **Federal Register** (62 FR 64306).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Alameda whipsnake published on October 18, 2005 (70 FR 60607). The comment period for the proposed rule closed on December 19, 2005. A second comment period was opened for comments on the Draft Economic Analysis (DEA) and the proposed rule on May 4, 2006, and closed on June 5, 2006 (71 FR 26311). Comments and new information received in response to the proposed rule and the DEA were incorporated in the final rule as appropriate and/or summarized below.

During the comment periods for the proposed rule, we received a total of 20 comment letters from Federal, State and local governments, and private individuals. Of those comment letters; 5 were peer reviews; 1 letter provided comments based on comparison of the proposed rule with the rule remanded by Court order on May 9, 2003; 10 provided comments on the status of particular lands, and 2 of these 10 also commented on comparison with the remanded rule; 1 letter commented on the occurrence of Alameda whipsnake in non-chaparral habitats; 1 stated that all habitat should be saved; 1 expressed general support for the draft East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (ECCHCP/NCCP); and 1 had particular questions on the impact of critical habitat designation on the development process. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the subspecies, the geographic region in which the subspecies occurs, and conservation biology principles. We received responses from all five peer reviewers. Four of the peer reviewers agreed generally with the descriptions, methods, and the primary constituent elements used in this designation. Of those that agreed, one peer reviewer stated the designation should go forward as written, two peer reviewers identified specific areas that should be added to the designation, and one peer reviewer identified specific areas for both addition to and removal from the designation. The fifth peer reviewer commented on habitat associations, feeding specialization, and slope exposure, and recommended additional explanation about habitats where the species is seen less frequently. One of five peer reviewers agreed with the exclusions we had already proposed under section 4(b)(2) of the Act but requested clarifications, while a second peer reviewer disagreed with those exclusions. The other three peer reviewers did not comment on the

exclusions. Three of five peer reviewers felt that additional areas should be designated critical habitat in the vicinities of proposed critical habitat Units 5A and 5B.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the Alameda whipsnake, and addressed them in the following summary.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer concluded that inadequate attention had been given to the issue of intergradation (transitional forms resulting from breeding with similar species; in this case, between the Alameda whipsnake and the chaparral whipsnake) in the proposed designation, noting that he had observed whipsnakes with characteristics of Alameda whipsnakes up to 20 miles (mi) (32 kilometers (km)) south of Unit 5A in Del Puerto Canyon and San Antonio Valley within Santa Clara County. The peer reviewer recommended that these areas should ideally be designated as critical habitat, and suggested that zones of intergradation are vital to the conservation of the Alameda whipsnake. The peer reviewer also called for a study of intergradation using genetic analysis as appropriate.

Our Response: We examined the available information on intergradation, including published descriptions by Reimer (1954, p. 47) and Jennings (1983, p. 343.1), and Jennings' comments on the proposed listing (Jennings 1994, letter dated March 19, 1994). Those references indicate potential intergrades on the eastern and southern range of the proposed designation, but not in Santa Clara County. Our research into additional occurrence records outside those areas designated in Santa Clara County did not locate documentation of such records of whipsnake intergrades during the preparation of this final rule. We requested the peer reviewer provide additional documentation, but did not receive a response within either comment period. Based on examination of our Geographic Information System (GIS) database, we determined that Del Puerto Canyon and San Antonio Valley do contain at least one primary constituent element (PCE). We conclude that the reviewer may be correct that Alameda whipsnake intergrades are present to the south of the proposed designation, but there is inadequate information to support a change in the designation in this area. While we may agree with the commenter as to the need for additional study, designation of critical habitat is based on the best and most current scientific and commercial information available. Without further information on the location of whipsnake intergrades, we cannot fully consider additional areas for inclusion in critical habitat. Finally, we do not believe that all such habitat, even if occupied, must be designated as critical habitat, nor did we believe it necessary to designate unoccupied habitat. We conclude that the designations of Units 5A and 5B as proposed are sufficient for conservation of the Alameda whipsnake in the southern range of the subspecies.

(2) *Comment:* One peer reviewer noted that the accepted common name of the Alameda whipsnake is Alameda striped racer, but assumes its use is beyond revision at this time.

Our Response: We have indicated in the Background section above that Alameda striped racer is another name for Alameda whipsnake.

(3) *Comment:* One peer reviewer suggested not excluding any critical habitat from the final designation because management for the Alameda whipsnake should not be much more difficult if such lands are included rather than excluded.

Our Response: We agree that the designation of critical habitat does not substantially increase the regulatory requirements already in place for a listed species. However, there are multiple ways to provide for the management and conservation of a species and its habitat. Federal, State, local, or private management plans can provide protection and management to avoid the need for designation of critical habitat. When we determine whether a plan is adequate in protecting a species or its habitat, we consider whether the plan, as a whole, will provide at least the same level of protection as the designation of critical habitat. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent or better overall. In making this determination, we examine whether the plan provides management, protection, or enhancement of the primary constituent elements (PCEs) that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. For more information, see Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act section below.

(4) *Comment:* One peer reviewer suggested that eucalyptus (*Eucalyptus* sp.) and redwood (*Sequoia sempervirens*) are not essential features because they can form a closed canopy. The peer reviewer states that eucalyptus in particular can invade grasslands and brushland habitats as well as increase fire risk, which could lead to the loss of regional Alameda whipsnake populations. However, the peer reviewer acknowledged the potential for eucalyptus and redwood trees to provide cover and function as a movement corridor. The reviewer provided six color digital aerial photographs showing his recommended removal from the critical habitat designation of groves of eucalyptus or other inappropriate habitat from Units 2 and 6. The reviewer comments that the proposed rule suggests that redwood and eucalyptus are essential features.

Our Response: In the proposed rule, we indicated that proliferation of non-native species, including eucalyptus, is a factor associated with threats to the Alameda whipsnake and is in need of special management. In this particular case, based on the existence of eucalyptus groves as well as roads, we have decided to remove one specific area in Unit 2 and three specific areas in Unit 6, as identified in the peer reviewer's comments. One additional change in Unit 2 included moving a portion of the west boundary to follow the alignment of Redwood Creek. We also reviewed language in the proposed rule as it pertains to eucalyptus and redwood. We conclude that this language notes that eucalyptus and redwood are examples of the types of vegetation included within woodland communities adjacent to scrub habitat, but this does not require that we include them. As noted by the peer review comment, these areas may require special management to reduce fire risk. As mentioned in the proposed and this final rule, PCE 2 provides several of the biological processes, including dispersal, foraging, and contact with adjacent habitat. There may be instances within the designation in which eucalyptus or redwood areas are included to provide the spatial connectivity needed for dispersal and

contact between higher quality vegetation types. We have decided not to remove mention of eucalyptus or redwood in the primary constituent elements section, because these habitat types may be present in areas that are essential for dispersal and contact and/or may require special management.

(5) *Comment:* Two peer reviewers suggested designating additional critical habitat in the area between Units 5A and 5B. One of the peer reviewers stated that this area has current Alameda whipsnake populations, is in private ownership, and may be threatened by direct mortality along ranch roads and residential development of ranchettes and cabins or other habitat modification. We requested and received additional documentation of Alameda whipsnake sightings in the subject area. The sightings, all photographed, were made between April 21, 2001, and May 2, 2004, by the peer reviewer: three on Ohlone Conservation Bank lands, and one adjacent to San Francisco Water Department lands (San Antonio Watershed).

A second peer reviewer's comment on this issue suggested that additional areas between Units 5A and 5B should be designated because it is a vast area of core type habitat, and the lack of observations is due only to a lack of surveys for the species in this specific area, and designation as critical habitat is necessary to connect major known Alameda whipsnake localities. The reviewer considered the division and reduction of Unit 5, relative to the 2000 rule remanded by the Court in 2003, to be inappropriate based on information concerning Alameda whipsnake habitat and mobility.

Our Response: We reviewed the materials provided and consider the additional sighting information provided by one of the peer reviewers to be authentic. GIS analysis confirms that the area mentioned by the peer reviewers contains all PCEs, and possesses significant blocks of chamise chaparral and coastal scrub vegetation as well as major rock outcroppings and Alameda whipsnake associated soils. This type of habitat is similar to more extensively surveyed areas, which support robust populations of Alameda whipsnake.

However, we consider the units presented in the proposed rule to contain sufficient PCEs to support the behaviors that we have determined to be essential to the conservation of the subspecies. For this reason, we have not designated this additional habitat recommended by the peer reviewer's in the final rule.

(6) *Comment:* One of the peer reviewers expressed concern that the proposed rule relies far too heavily on Swaim (1994), and appears not to have consulted key references (Larsen *et al.* 1991; McGinnis and Swaim 1992, Swaim and McGinnis 1992). The reviewer summarizes several aspects of Alameda whipsnake biology, including the importance of (a) rock, talus, and burrows, (b) high lizard densities, (c) southerly slope aspect, and (d) open canopy shrub or chaparral. The reviewer states that Alameda whipsnakes may forage or pass through a variety of other community types such as grassland and oak woodland. The reviewer believes that the proposed rule gives the inaccurate impression that snake populations may occur only in these other community types and that, therefore, additional explanation is needed. The reviewer expresses concern that this impression may result in misinterpretation during Section 7 consultations. The reviewer states that annual grassland, even if adjacent to scrub or chaparral (PCE 1), is not critical habitat if it has a low prey base or low presence of retreat sites. The reviewer states that the final critical habitat rule should address the potential for development on areas with no such features, and gives Moller Ranch as an example where development was done in a manner compatible with preservation of snake habitat.

Our Response: We consulted the three references cited in the peer review (Larsen *et al.* 1991; Swaim and McGinnis 1992; McGinnis and Swaim 1992). The findings of Swaim and McGinnis (1992) which state that Alameda whipsnakes were most often associated with southerly slope aspects is adequately summarized in the proposed rule (70 FR 60610). More recent analyses establish that this association is not as exclusive as originally indicated by Swaim and McGinnis (1992), in which Alameda whipsnakes were never found on several other slope aspects. In fact, Alameda whipsnakes do use all slope aspects. As already discussed in the proposed rule (70 FR 60610), this conclusion is based on much more extensive studies by Swaim (2000, 2003, 2004, 2005b–d), as well as on further analysis of the most current database of all records by Alvarez (2005, 2006 in press). Alvarez (2006 in press, p. 1) found 17 of 82 (21 percent) of Alameda whipsnake records with reliable slope aspect determination to be on west, north, and northwest slopes. Furthermore, 37 of 129 records (29 percent) of Alameda whipsnake observations reviewed by Alvarez (2005, p. 22) were found outside of vegetation types considered typical habitat for the subspecies. Such usage is well beyond incidental occurrence implied by the peer reviewer. For this final rule, we have modified the wording slightly in the second paragraph of the Habitat section (70 FR 60610, see also below), to reflect the submission during the comment periods of additional materials.

The study by Larsen *et al.* (1991) supports the statement in the proposed rule that Alameda whipsnakes are specialists, eating mainly lizards (70 FR 60609). The study by McGinnis and Swaim (1992) is substantially similar to Swaim (1994); it does indicate that the Alameda whipsnake monitored at Moller Ranch spent 9 percent of its time on annual grassland (McGinnis and Swaim 1992, pp. 35–42). There is insufficient information from that study or Alvarez (2006 in press) to conclude that grassland without crevices or rocks is never used. Based on the information available on the subspecies, it is our best professional opinion that movement through all habitat types must occasionally occur in order to conserve this subspecies. Accordingly, no change in the final rule is warranted based on either of these citations.

This final rule defines three PCEs, all of which define elements considered essential for conservation of the subspecies (*see* Primary Constituent Elements, below). We decided not to base the inclusion of annual grassland as critical habitat on prey densities or retreat sites for a number of reasons. First, as noted elsewhere in this peer review and in studies by Swaim (1994) and Alvarez (2005, 2006 in press), Alameda whipsnakes do utilize grassland habitat for foraging, dispersal, mate-seeking, and egg-laying activities (*see also* Background, above). These are essential life history functions that do not necessarily rely on the presence of lizard prey densities or retreat sites. Multiple captures of juvenile Alameda whipsnakes in grassy ridges during recent monitoring of the Stonebrae Country Club project site suggest that this habitat may provide an important dispersal corridor (Swaim 2006, p. 6). Second, lizard prey densities can fluctuate within and between seasons, and determination of critical habitat on lizard prey densities may lead to inaccurate representations of habitat quality based on instantaneous measurement. Third, those areas which contain PCE 2 such as grassland, which may be utilized less frequently due to absence of PCE 1 or 3, may lack those PCEs due to prior scrub clearing. Such

areas may be subject to special management considerations, which could enhance habitat quality and contribute to the conservation of the subspecies. Fourth, as already mentioned in the proposed rule, designation of these areas minimizes overall fragmentation of critical habitat and allows for interaction between population components of the subspecies.

Comments Related to Site-Specific Areas

(7) *Comment:* One commenter requested that a location in Unit 3 known as the Stonebrae project (formerly Blue Rock) be removed from the designation. The commenter asserted that few Alameda whipsnakes have been found there, the site has been graded, and the developed portion of the site does not contain the PCEs. The commenter's reasons for excluding the site are that a section 7 consultation with the Service for this project site has been completed (Service file reference number 1–1–01–F–0275, dated July 12, 2002); the site is not essential to the conservation of the Alameda whipsnake; the site does not require special management beyond that addressed in an existing management plan; the benefits of exclusion outweigh the benefits of inclusion under section 4(b)(2) of the Act and; citing our proposed rule (70 FR 60607, p 60620), the section 7 consultation constitutes a type of formalized agreement that would provide assurances that conservation measures for the subspecies will be implemented and effective.

Our Response: We requested and received additional monitoring information from the commenter, which reported that 7 Alameda whipsnakes were captured in the immediate vicinity of the site in 2004, and 38 whipsnakes were captured in 2005 (Swaim 2006, pp. 1, 4). Only a portion of the site is currently graded or will be graded in the future. The golf course element of the project as well as the open space currently have at least one of the PCEs based on our analysis of the site and information in our files.

However, we confirm that a Biological Opinion has been issued for the Stonebrae project. The Service agrees with the commenter that this constitutes a formalized relationship with assurances that conservation measures for the subspecies will be implemented and effective, because implementation of the conservation measures within the project description is required under the Biological Opinion. The project area in its entirety has been excluded from the final rule. For more information, see Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act section below.

(8) *Comment:* In reference to our proposal not to exclude lands in Mount Diablo State Park, one commenter explained that several management activities, including the removal of livestock, and construction and maintenance of fuel breaks, may be causing considerable ecological impact, and monitoring of park lands has been inadequate. The commenter pointed out the inability of the State Park to fulfill directives to protect listed species in accordance with the Mount Diablo 1989 General Plan.

Our Response: In our proposed rule, we solicited information from the State as to whether lands within Mount Diablo should be excluded from the designation. We did not receive any information from the State regarding the designation of critical habitat. We have not excluded Mount Diablo State Park from our final designation, because it contains the PCE for the species and the area meets our criteria for designation.

(9) *Comment:* One commenter requested that the eastern boundary of Unit 6 be revised to match more specific information in a Biological Opinion for a housing development known as Gateway/Montanera (Service file reference number 1–1–02–F–0168, dated October 8, 2004). The commenter noted that the requested boundary change is based on criteria used in the critical habitat designation that was applicable at the time of consultation with the Service and, although that critical habitat rule was remanded, the methodology for assessing PCEs has not changed significantly in the proposed rule.

Our Response: The discussion of the Conservation Measures in the Biological Opinion states that the 973 ac (394 ha) of conservation lands are expected to benefit the Alameda whipsnake (p. 43 of Biological Opinion) and ''enhance the value of critical habitat on these lands.'' Thus, retention of such conservation lands as critical habitat is consistent with the Biological Opinion. The commenter's proposed boundary revision primarily separates those areas that will be impacted as permitted under the Biological Opinion from areas that will not be affected and possess the PCEs. These impacts include construction of residences, recreational facilities, trails of various kinds, grading, and installation of drainage. In the final rule, the Service has revised the critical habitat boundary as requested by the commenter to remove developed areas or areas planned to be developed.

(10) *Comment:* Two commenters supported the proposed exclusion of areas covered by the ECCHCP/NCCP for various reasons. One commenter indicated that an overlapping critical habitat designation could undermine permit streamlining aspects of Habitat Conservation Plans (HCP). A second commenter listed the benefits of the conservation measures in the ECCHCP/NCCP of habitat preservation, connectivity, management and enhancement, mitigation of activities covered by the ECCHCP/NCCP, and contributions to recovery of the Alameda whipsnake and maintenance of ecosystem functions.

Our Response: In this final rule, we have excluded lands within the ECCHCP/NCCP boundary. For more information, see Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act section below.

(11) *Comment:* One commenter compared the critical habitat designated in the proposed rule with a previous 2000 rule which was remanded by the Court, and stated that the Service has not adequately explained or identified why 203,366 ac (82,299 ha) previously designated as critical habitat are not included in the currently proposed rule. The commenter specifically refers to areas between Units 5A and 5B, areas adjacent to proposed development in Unit 3, portions of Unit 1, and all of an area known as Unit 7 in the remanded 2000 rule. The commenter concludes the exclusion of these previously designated areas to be arbitrary.

Our Response: The Service did not arbitrarily exclude areas in the proposed rule. We examined the area previously designated as Unit 7 for the Alameda whipsnake and considered them along with all other scientific information and evaluated the areas based on our methods and criteria for this designation. The area within the previously know Unit 7 did not meet the criteria we used to identify critical habitat for this designation. We consider the areas and PCEs included within the currently identified critical habitat to be sufficient for conservation of the subspecies.

With respect to the area formerly designated as Unit 7 in the remanded rule, we concluded that the potential for movement between Units 3 and 4 is possible, but so severely limited by existing roadways and current land uses that designation of the area between them would not result in a high potential for dispersal. The area within the formally designated Unit 7 did not meet our criteria for being designated as critical habitat and is not essential.

As explained above in our responses to similar comments by three peer reviewers (*see* Comments 1 and 5), we consider the areas designated in Units 5A and 5B of the proposed rule to contain sufficient PCEs to support the behaviors that we have determined to be essential to the conservation of the subspecies.

The boundaries of Units 1 and 3 in the proposed rule were determined from features visible in aerial imagery and described in the criteria and methods as including one or more of the following: Ground disturbance or other included development; proximity to development; included structures or roads; proportion of scrub and chaparral; and proportion of soils types associated with multiple records of Alameda whipsnake. We have re-examined these particular areas, and have determined that the boundaries of Units 1 and 3 are consistent with the criteria and methods described in the proposed rule. In this final rule, we have excluded one area within Unit 3 because it had been adequately considered in a previous Biological Opinion (see Comment 7, above)

(12) *Comment:* One commenter noted that the proposed rule did not identify the area or specific locations of habitat proposed for exclusion under section 4(b)(2) of the Act. The commenter assumes that the Service proposes to exclude 42,665 ac (7,058 ha) from Unit 4 that are covered by the ECCHCP/NCCP, in addition to the 17,440 ac (7,058 ha) of East Bay Regional Park District (EBRPD) land that will be excluded.

The commenter believes that the Service has improperly equated protections of critical habitat with those of species listing in its exclusion of ECCHCP/NCCP lands. The commenter further states that the proposed rule did not state the reasons why EBRPD lands were excluded, or identified management activities that may be conducted under federal permits or funding that are detrimental to the Alameda whipsnake. Finally, the commenter states that the impacts of recreational activities, grazing, and roads on EBRPD lands proposed for exclusion were not discussed by the Service.

Our Response: Table 1 of the proposed rule (70 FR 60616) shows the distribution by unit of the lands proposed for exclusion. The amount of area covered under the ECCHCP/NCCP can be obtained by subtracting the local area column in Table 2 from the total area proposed for exclusion column in Table 1. The language in the Unit 4 description in the final rule has been slightly revised so that it states that EBRPD lands are excluded, rather than a portion of such lands. An additional section has been provided in the final rule explaining the Service's consideration of the incremental protection of designation (*see* Role of Critical Habitat in Actual Practice of Administering and Implementing the Act). The proposed rule did include an evaluation and description of Federal actions that may destroy or adversely modify habitat, or may jeopardize the continued existence of the Alameda whipsnake (70 FR 60619), which we have revised below (*see* Effects of Critical Habitat Designation). These or other activities could be affected by management activity on EBRPD lands. As further discussed in the proposed rule, however, we proposed to exclude EBRPD lands based on participation and linkage with the ECCHCP/NCCP, and to remove disincentives of such participation and linkage where deemed appropriate. For more information, *see Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act* section below.

(13) *Comment:* One commenter noted that his client's property, known as Oak Knoll, had been properly excluded from the critical habitat designation, and should remain excluded in the final rule because it was poor habitat, there were no Alameda whipsnake observations, and exclusion of the site would meet the section 4(b)(2) balancing test.

Our Response: In consideration of the criteria described in the proposed rule, the location known as Oak Knoll, a decommissioned Federal facility, was not determined to be essential for the conservation of the subspecies. We are not aware of any recent information that would warrant inclusion of this area as critical habitat.

(14) *Comment:* One commenter indicated that present information did not support designation of a 450 ac (182 ha) property in Unit 2 known as Faria Ranch. The commenter represents a client who plans to construct a housing development on the property. The commenter asserts that Faria Ranch generally lacks PCEs, and Alameda whipsnakes have not been found on the site. The comment suggests that EnviroNet (2000) surveyed the site and found no Alameda whipsnakes. Further, the commenter compared the EBRPD Master Plan to a draft document (Huffman-Broadway Group 2005) his client intends to submit in the future as part of an application for a 404 permit in connection to a section 7 consultation with the Service (*i.e.*, the draft document was provided during the comment period, but consultation with the Service has not been initiated). The commenter concludes, based on this comparison, that no further mitigation measures are required. The commenter makes several further general comments related to methods, which we address separately below (*see* Comments Relating to Criteria and Methods).

Our Response: Faria Ranch is part of a larger geographic area encompassing all of the features known as Las Trampas Ridge. In contrast to the suggestion by the commenter that Alameda whipsnakes were not found in surveys, we find that EnviroNet (2000, p. 1) states that ''No trapping of the whipsnake was conducted.'' EnviroNet (2000, p. 5) also concludes that Alameda whipsnakes may use the site for short periods of time. Moreover, Faria Ranch is within 2 to 4 mi (3 to 6 km) of verified records of Alameda whipsnakes, contains small quantities of chaparral and rock outcrops, and is within 1,400 ft (427 meters (m)) of much more extensive rock outcrops and chaparral. We requested and received from the commenter Appendix 4b of the Huffman-Broadway Group (2005) report, which included a more recent 2005 site assessment (Swaim 2005e). This 2005 site assessment concludes that, due to the extensive patches of high-quality scrub and chaparral in such close proximity to the site, it is very likely that Alameda whipsnakes do occur on Faria Ranch (Swaim 2005e, p. 4). Swaim (2005e, p. 4) notes that while Alameda whipsnake surveys were not conducted during this assessment, Faria Ranch was likely to support high densities of this subspecies based on the habitat quality and connection to other areas with recorded sightings of Alameda whipsnakes. In contrast to the conclusion by EnviroNet (2000, p. 5) that usage would be short term and infrequent, Swaim (2005e, p. 4) suggests that portions of Faria Ranch would be included within home ranges of any snakes present in the extensive rock outcrops and chaparral just north of Faria Ranch.

We also examined the materials provided for presence or absence of the PCEs. Plate C of EnviroNet (2000) provides definitive photographic proof of PCEs 1 and 2 on and immediately adjacent to the site. The abundant rock outcrops within 1,400 ft (427 ha) of the site were verified by the soil information in our GIS database (Rocky Outcrops—Xerothants). A professional botanist provided further evidence of outcrops within the site itself, stating that shrubby rock outcrops were examined in detail on three occasions on Faria Ranch (Huffman-Broadway Group 2005, p. 16). In addition to the

small inclusions of chaparral and some animal burrows noted on the site by EnviroNet (2000, p. 4), much more chaparral occurs in association with the rocky soils close to the site. The mammal survey provided by the commenter includes an array of common burrowing mammals that very likely burrowed on site (Table 2, Attachment 2 in Huffman-Broadway Group 2005). The rock outcrops and burrows demonstrate the presence of PCE 3 on the site, which is used by the Alameda whipsnake for shelter, hibernacula (wintering shelter), foraging, dispersal, and additional prey population support functions.

In the proposed rule, we discussed the need for special management considerations to address inappropriate grazing practices. EnviroNet (2000, p. 4) identifies grazing as a factor on Faria Ranch that has favored invasive exotic species. Special management considerations may be needed to manage various effects of grazing or rangeland management practices on habitat for Alameda whipsnake, as discussed above (Threats), and below in our response to Comment 28. In conclusion, the best scientific data indicate that Faria Ranch contains all of the PCEs and may require special management. The geographic feature of Las Trampas Ridge, which includes Faria Ranch, is occupied by Alameda whipsnake. The proximity of observations of Alameda whipsnakes to Faria Ranch are well within the dispersal capabilities of the Alameda whipsnake, and the habitat is of sufficiently high quality under the criteria we have described in the proposed rule to warrant designation. Further, the section 7 consultation process has not been initiated, so the site cannot be considered for exclusion or removal on that basis. For these reasons, Faria Ranch is included in the designated critical habitat in the final rule.

(15) *Comment:* One commenter points out that the description of Unit 5A does not include PCE 3, and does not see how Unit 5A can be critical habitat if it is devoid of one of the PCE's.

Our Response: It is not necessary that habitat contain all of the PCEs to be designated critical habitat; only sufficient PCEs necessary to support one of the life history functions of the species is necessary. However, the Unit 5A description in the final rule has been amended to make clear that it does contain an abundance of rock bearing soils such as rock land, Vallecitos rocky loam, and other types, indicating the presence of PCE 3 (talus).

Comments Relating to Criteria and Methods

(16) *Comment:* One commenter stated that the proposed rule is inadequate because it does not include any unoccupied habitat. The commenter states that unoccupied habitat is necessary to the survival and recovery of the subspecies. The commenter makes reference to our discussion about habitat loss and fragmentation in the remanded October 3, 2000, final critical habitat rule (65 FR 58933). The commenter suggests that the Service has also excluded habitat that currently lacks PCEs but could be restored to provide PCEs and aid in the recovery of the subspecies. Additionally, the commenter notes that the Service did not include any type of buffer habitat.

Our Response: The criteria and methods in the proposed and this final rule have been significantly revised from the remanded final critical habitat rule (65 FR 58933) as it pertains to occupancy. Habitat determined to be occupied included the habitat between recorded observations within the capable and necessary range of movement, with relatively high quality habitat for the Alameda whipsnake, presence of the PCEs, and other factors (*see* Methods section and Criteria Used to Identify Critical Habitat, below). Additionally, one of the peer reviewers concurred with our methodology due to extensive trapping surveys in those areas we have designated and where Alameda whipsnakes have been found. Habitat occupied by the subspecies extends beyond the precise point of collection or observation of known Alameda whipsnake sightings, because the snakes have the ability and necessity to move and disperse to locations outside these areas, and because the known records are only a fraction of the actual population of Alameda whipsnakes. Furthermore, although the commenter is correct in that we have not designated habitat that does not contain the PCEs but may be restorable, we have concluded that designating such habitat is not essential for conservation of the subspecies. We have determined that we designated sufficient habitat for the conservation of the subspecies.

(17) *Comment:* One commenter stated that there was no method for determining how or when Act protections were no longer needed and that this violates the Act as interpreted by the Court.

Our Response: The language in the May 9, 2003, Court decision to which the commenter is referring relates to the issue of identification of PCEs. The final rule identifies, enumerates, and discusses those PCEs the Service considers essential to the conservation of the subspecies and directly relates those PCEs to the specific areas being designated and to our implementing regulation found at 50CFR 424.12. The final rule is, therefore, in full compliance with the Act as interpreted by the Court decision. Additionally, the process for determining when the protections of the Act are no longer needed is part of the Recovery planning and delisting process and not part of critical habitat designation.

(18) *Comment:* One commenter states that the proposed rule has deficiencies similar to the remanded rule because it relies on exclusion criteria that result in what the commenter terms ''deferral and overdesignation'' problems.

Our Response: The language in the May 9, 2003, Court decision to which the commenter is referring relates to a finding, as a matter of law, that the Service's dependence in the remanded rule on exclusion criteria is unwarranted because the remanded rule excluded only features and structures, not the land on which they are located. The proposed rule, as noted by the commenter, does exclude the land which contains buildings, paved areas, and other structures. We have, therefore, not designated this land as critical habitat, and we consider the proposed rule in compliance with the Act as interpreted by the Court decision. Minor editing of the language is included in this final rule.

(19) *Comment:* One commenter stated that while the PCEs described in the proposed rule are those known to be associated with Alameda whipsnake, no attempt was made in the proposed rule to discern which features or settings are truly essential to the subspecies' conservation. The commenter states that the May 9, 2003, Court decision requires the Service to do more than identifying habitat features to be associated with the subspecies. The commenter claims that all areas within each unit that contain PCEs were designated because the proposed rule did not state a quantity for patch dimension or minimum amount.

Our Response: The PCEs described in the proposed rule were not selected based on mere association with Alameda whipsnake observations or records. The proposed rule includes a detailed description of the PCEs, states that they are essential, describes the relationship of each PCE to critical and essential life history processes of the Alameda whipsnake, and provides support of the selection of the PCEs with the best available scientific

information. This information indicates that a range of patch sizes, from very small to large patches, is known to support Alameda whipsnake (Swaim 2004, p. 1). In the proposed rule, the Service did not specify a patch size or minimum amount of chaparral habitat as a criterion for designating critical habitat. The PCEs describe the features essential for the Alameda whipsnake and no changes were made in this final rule. For additional information, see Criteria Used to Identify Critical Habitat, below.

(20) *Comment:* One commenter considered the description of the PCEs to be overly broad and not in compliance with the May 9, 2003, Court decision. The commenter concludes that the formulation of the PCEs in the proposed rule provide no guidance for determining the areas that are essential to the conservation of the subspecies, because all undeveloped areas of the East Bay would possess the PCEs.

Our Response: The proposed rule includes a detailed description of the PCEs and a rationale for why they are essential, describes the relationship of each PCE to critical and essential life history processes of the Alameda whipsnake, and provides support for the selection of the PCEs with the best available scientific information. In addition to the PCE descriptions, the proposed rule includes additional detailed discussion of the methods and criteria used to designate critical habitat. As a result of applying these methods and criteria, we have designated sufficient areas containing essential PCEs to provide for the life history functions of the subspecies and ensure its conservation. These areas are substantially less than all such areas in the East Bay that contain PCEs. The Service considers the methods and criteria in the proposed rule to be in full compliance with the May 9, 2003 Court decision. No change in the description of the PCEs, methods, or criteria is warranted in the final rule.

(21) *Comment:* One commenter stated that adjacent habitats are frequently used and may be critical in their own right. The commenter included two peer-reviewed publications supporting his comment (Alvarez 2005, 2006 in press).

Our Response: The Service reached this same conclusion in the proposed rule (70 FR 60610, ''Habitat''). The references were reviewed and found to provide further support for this conclusion as well as for Alameda whipsnake mobility. Therefore, this additional information was added to the revised sections on Habitat, and Dispersal Habitat, below. *See also* our response to a peer reviewer, above (Comment 6).

Comments Relating to Adequacy of Notice

(22) *Comment:* One comment stated that the maps provided in the proposed rule were inadequate because they lacked scale and identifying features to enable the public to determine what land had been excluded, and did not allow the public to determine the differences between areas designated in the proposed rule compared to the previous rule remanded by Court decision on May 9, 2003.

Our Response: The Service considers the maps in the proposed rule to be adequate for comment. The Service also provided a full legal description of all designated areas in the proposed rule. As indicated in the summary of the proposed rule, all supporting documents used in preparation were available for public inspection. The commenter did not request to examine these records. The GIS shapefiles were provided to anyone making a request for such information. The Service was not under a statutory or Court requirement to compare and explain differences between the remanded rule and the proposed rule published on October 18, 2005. Because the previous critical habitat designation was vacated by the Court, this designation is based on the best scientific information currently available and stands alone for evaluation and review.

(23) *Comment:* One commenter contends that the proposed rule fails to specify the PCEs, and that its designation of broad areas not presently occupied by the Alameda whipsnake constitutes a failure to provide adequate public notice.

Our Response: We specified the PCEs in the proposed rule and did not designate areas unoccupied by the Alameda whipsnake (*see* response to Comment 16). The proposed designation was limited to those areas containing high quality habitat for the Alameda whipsnake as outlined in the Criteria Used to Identify Critical Habitat section of the proposed rule. We also specifically noticed all appropriate Federal, State, and County government officials, agencies, representatives, and the public through direct mailing, local media news releases, Web site posting, and newspaper notice. Accordingly, the notice of publication of the proposed rule is adequate.

Comments Relating to General Issues of Development Interests

(24) *Comment:* One commenter requested clarity on several aspects of the development process by the City of Pleasanton, under several possible scenarios, namely: (a) Is destruction of Alameda whipsnake critical habitat considered ''take'' when no Federal permit or action is required? (b) What type of protection is conferred by critical habitat designation when a Section 7 permit is not required? (c) Does a single home development on infill within a critical habitat area require an HCP? (d) Is there a mechanism for the Service to remove inappropriately designated properties? The comment noted that the position of Dublin on Figures 3 and 5 of the proposed rule should be north of Interstate Highway 580.

Our Response: For information relating to questions (a) and (b) please see Effects of Critical Habitat Designation, below. A Federal nexus is required to implement the protections of critical habitat designation. In response to question (c), the Service notes that the commenter does not specify a particular location; therefore we can not provide a specific response to this question. In designating critical habitat, we avoided areas which included fragmented habitat. As a result there are no areas which would be considered as ''infill'' as described by the commenter. Also, in designating the critical habitat for this species, we did not include small areas embedded within urban areas and to the best of our ability did not include developed areas within the designation. Any such developed areas remaining within the designation would not contain the PCEs and thus not be considered critical habitat. As for question (d), the primary mechanism for removal of areas that do not contain the PCEs is through the comment period that preceded publication of this final rule. The Service notes that the commenter did not specify any particular location. However, the Service has extensively reviewed all available information, published a proposed critical habitat, and modified the proposed designation in this final rule as appropriate in response to comments. Figures 3 and 5 of the proposed rule do not indicate the position of Dublin.

If a Federal activity or other activity with a Federal nexus within designated critical habitat is contemplated, consultation would be required and Section 7 authorization obtained for any adverse modification of critical habitat. Habitat conditions at the site of the action would be considered during this consultation. For additional or more site-specific information, please contact the Service's Sacramento Field Office (*see* **ADDRESSES**).

(25) *Comment:* One commenter suggested that the language describing activities that destroy or adversely modify critical habitat should be revised to include actions that degrade chaparral scrub or oak woodland, rather than actions that alter and degrade such habitat.

Our Response: The language in the final rule has been modified in response to this comment to indicate that activities that destroy or adversely modify critical habitat are those that degrade such habitat (*see* Effects of Critical Habitat Designation, Adverse Modification Standard, below).

Comments From Other Federal Agencies

(26) *Comment:* Lawrence Livermore National Laboratory (LLNL) provided information showing that a portion of Department of Energy (DOE) lands designated as critical habitat within Unit 5A had been burned, and mentioned a number of ongoing activities it expects to continue that have already completed consultation with the Service. Finally, LLNL requested that language in the final rule be amended to mention the initiatives and efforts undertaken as conservation measures in its Site 300, which includes the designated critical habitat, to protect the Alameda whipsnake and associated coastal scrub habitat.

Our Response: We verified with the LLNL that the comments with respect to fire and ongoing activities were provided to us as informational only, and that LLNL is not requesting that its lands be excluded from the designation. We acknowledge the conservation measures mentioned in the comment. In this final rule, we have decided not to exclude DOE lands, and have removed the language stating that the Service is unaware of specific management plans or conservation measures being undertaken for the Alameda whipsnake or its PCEs at LLNL.

Comments From the State

(27) *Comment:* The University of California Regents indicated that Table 2 of the proposed rule should reflect ownership of 720 ac (291 ha) acres in Unit 6 and 15 ac (6 ha) in Unit 1 by the University of California Regents.

Our Response: In the final rule, the unit descriptions and Table 2 were modified to show 720 ac (291 ha) and 15 ac (6 ha) in Units 6 and 1, respectively, owned by the State of California, and deducted these areas from private ownership.

(28) *Comment:* The University of California Regents suggested that the language in the proposed rule relating to special management considerations in Unit 6 is problematic for the University of California and local residents due to traffic flow and emergency access issues, and that any recommendation to reduce existing, or limit additional roads should be removed from the final designation.

Our Response: Unit 6 is essential to the conservation of the subspecies not only as occupied habitat, but also as a connectivity corridor for Alameda whipsnake movement between Units 1 and 2. The limited area and width of this unit render its functioning as a migration corridor particularly sensitive to the existing or additional roads. Accordingly, we believe that special management consideration may be needed to avoid adversely modifying this habitat. It is not our intent in this rule to determine what site-specific management measures would be needed within portions of Unit 6. Subsequent consultation would be needed to determine what, if any, specific management may be needed.

(29) *Comment:* The University of California Regents requested that State lands managed by the University of California Fire Fuel Reduction Programs should be excluded from the critical habitat designation. They contend that measures described in the 2020 Long Range Development Plan (2020 LRDP) are equivalent to those in a habitat conservation plan, and are sufficiently protective of endangered species. The commenter detailed some of the mitigation measures and practices in the LRDP. The commenter also expressed concern about what consultation burden would be required under sections 9 and 10 of the Act due to designation.

Our Response: When we consider exclusions under section 4(b)(2) of the Act, we determine whether the benefits of exclusion outweigh the benefits of including the land in a designation. That determination may include an evaluation of any existing management plans. When evaluating the 2020 LRDP to determine its adequacy in protecting habitat, we initially considered whether the plan, as a whole, will provide a level of protection similar to that which designation of critical habitat would provide. Although much of the land is designated in the 2020 LRDP as an Ecological Study Area (ESA), the potential for development is not ruled out. For example, the 2020 LRDP (p. 3.1–56) states that faculty housing or a campus retreat center are feasible campus uses of Chaparral Hill or Claremont Canyon. Even though the document states that other options should be fully explored, it clearly anticipates the potential for this type of urban development. We conclude that the subject area is occupied by Alameda whipsnake and contains all of the PCEs. However, the plan does not provide a reasonable expectation of protection of the Alameda whipsnake or its habitat into the foreseeable future, and therefore does not warrant exclusion under section 4(b)(2) of the Act. The subject area remains designated as critical habitat in the final rule.

(30) *Comment:* The University of California Cooperative Extension discussed potential benefits of grazing to the Alameda whipsnake, and expressed a concern that the mention of it as a threat may lead to a general determination that grazing is incompatible. The commenter requested that evidence of incompatible grazing practices be specifically listed. The commenter states that the type of special management of grazing in the unit descriptions could be interpreted as meaning grazing should be required, given the benefits listed by the commenter.

In relation to special management considerations or protections, the University of California Cooperative Extension suggested that grazing be used instead of prescribed fire because the fuel load is undesirable for prescribed fires and may result in a wildfire.

Our Response: The Service discussed the threat of incompatible grazing practices in more detail in our 1997 final listing rule (65 FR 64306, p 64314). Review of that discussion and McGinnis (1992, p. 21) indicates that overgrazing, or clearing of shrub associated with preparation of lands for grazing, may threaten the Alameda whipsnake. Alameda whipsnakes may avoid open areas created by overgrazing, or may be more susceptible to predators if they use these areas. Scrub vegetation (PCE 1) may be lost through either overgrazing or associated range management in which scrub is burned or bulldozed to maximize grassland. We do not agree that mere mention in the unit descriptions of grazing as a special management consideration means that it is required. We have added a brief summary of threats and special management as applied to grazing to the final rule.

The proposed rule does not preclude the use of grazing as a management practice for the reasons stated by the commenter. Indigenous chaparral scrub species that constitute PCE 1, including the federally listed pallid manzanita (*Arctostaphylos pallida*), require fire to create proper site conditions and for seed germination. Thus, the use of prescribed burning may be appropriate in some situations and the discussion of

its potential use has been retained in the final rule.

Comments Relating to the Draft Economic Analysis

(31) *Comment:* One comment noted that the Faria Ranch project spans two Census Tracts (345201 and 345202) and that by estimating impacts on a census tract basis, the total impacts of critical habitat on the project are diluted. The comment also suggests that the projected number of housing units reported in the Draft Economic Analysis (DEA) under-predicts development in Census Tract 345201.

Our Response: Census Tracts are a standard unit of analysis used in economic and policy studies. Nonetheless, cases may arise where Census Tract boundaries will not conform to actual development projects. In these cases, we have, in previous analyses, aggregated Census Tracts to fit planned developments. In the final economic analysis (FEA), Census Tracts 345201 and 345202 are aggregated to account for the fact that the Faria Project spans these two tracts, (*see* Exhibits IV–I through IV–4 and Figure 2 of the FEA). Merging the development projections for these two tracts addresses the concern that impacts are underestimated in Census Tract 345201.

(32) *Comment:* One comment states that the actual reduction in development resulting from designation of critical habitat in the Faria Project (located in Census Tracts 345201 and 345202) could be greater than the 5.4 percent reduction assumed in the DEA. The comment states that the DEA should consider a development scenario where up to 15 percent of proposed housing units are lost.

Our Response: The assumption, referred to in this comment, of a 5.4 percent reduction in housing units for projects developed in proposed critical habitat is applied in the first development scenario (*i.e.*, the rationing scenario) analyzed in Section IV, pages 27 to 30. We derived this assumption from the best available information of the likely avoidance and mitigation requirements for the whipsnake by reviewing historical section 7 consultations and resulting biological opinions for similar development projects. If the Service requests more stringent habitat avoidance, resulting in a greater loss of units than the average demonstrated in the documented consultation history for projects of this type, the impacts of critical habitat designation will be higher than estimated in the FEA.

(33) *Comment:* One comment states that the DEA should evaluate a scenario for the Faria Project (located in Census Tracts 345201 and 345202) where the critical habitat designation adds to current regulatory, political, and economic conditions and results in the cancellation of the project in its entirety. The Faria Project is a mixed-unit housing development that includes high-value homes and affordable housing units. As a result, the high-value single homes are being used to subsidize the majority of the public infrastructure costs. The comment states that reducing the unit count would likely remove a disproportionately greater number of the higher-value single-family units, which could result in the project becoming economically infeasible.

Our Response: With respect to project cancellation, we note that the conservation requirements reflected in the biological opinions would not, as a general rule, result in projects becoming unprofitable. Section IV, pages 27 to 28, and Appendices A and B of the FEA describe the underlying conditions in the Bay Area housing markets and note that because the supply of new housing is so constrained, there is significant producer surplus accruing to projects that are ultimately completed. In such an environment, burdensome conservation requirements can reduce producer surplus without causing the project to become unprofitable. Indeed, this is one reason for the relatively high price of mitigation lands in California.

(34) *Comment:* The comment states that compensation for lost units at the Faria Project will likely require development outside the City's ''Urban Growth Boundary'' (UGB). The UGB is the result of an initiative passed by the voters to protect open space and prohibits residential development beyond the City's UGB for at least 20 years. Consequently, the DEA fails to include the costs of relaxing these UGB restrictions or delaying housing development for 20 years.

Our Response: For the reasons described above, expansion beyond the UGB is likely to be difficult. In the DEA, we assume that relaxing the UGB is unlikely, and therefore we do not estimate costs associated with such action. The costs to society of staying within the UGB are estimated in the first development scenario (*i.e.*, the rationing scenario). These costs are greater than a scenario where units are delayed by 20 years rather than lost entirely.

(35) *Comment:* One comment states that the densification scenario is not likely at the Faria Project (located in Census Tracts 345201 and 345202), because the project is already at the maximum densities allowed under existing land use plans and regulations.

Our Response: The scenario referred to in this comment is described in Section IV, pages 27 to 30. This scenario assumes that efforts to protect the Alameda whipsnake and its habitat are accommodated entirely by building housing units at higher density levels than allowed by current zoning regulations (*i.e.*, no housing units are lost). To develop this scenario, we first used empirical data to test for conditions that might lead to re-zoning. As described on page 28, the FEA examined data on newly constructed homes in three of the five study regions to determine whether the market for new housing is constrained primarily by the availability of land or by prior land-use regulations. The results of this analysis, described in detail in Appendix A, strongly indicates that the number of new homes in the regions of California containing Alameda whipsnake critical habitat is constrained by prior regulation. The implication of these results is that the final impact of critical habitat depends on how local governments respond to the designation, which can vary from city to city. In order to capture the dynamic response of various cities, the EA utilizes two scenarios: One in which the local government changes local land regulations due to critical habitat and one scenario where local government does not change local land regulations. Thus, for projects located in cities where the local government does not change land regulations (*e.g.*, the Faria Project described in the comment), the more likely scenario is a reduction in housing units developed due to critical habitat (*i.e.*, the first scenario, or the rationing scenario).

(36) *Comment*: One comment states that the densification scenario does not address the issue of added project costs when a lesser portion of the project site is used. Specifically, densification of the Faria Project would increase site improvement costs by up to $40,000,000 for materials hauling and other expenses.

Our Response: The DEA does estimate costs associated with the densification scenario. The cost estimates were based on the information received and gathered prior to and after the opening of the public comment period. We agree that additional costs may be incurred; however, based on our analysis of the economic information we do not believe that there are any disproportionate economic impacts that warrant exclusion pursuant to section 4(b)(2) of the Act at this time.

(37) *Comment*: One comment stated that the EA fails to account for significant public benefits that would result from completion of the Faria Ranch project, including protection of public open space, educational facilities, and a trail system.

Our Response: The economic analysis estimates the impacts of whipsnake conservation efforts relative to the state of the world absent those efforts. Absent conservation efforts, the Faria Project provides the public benefits described in the comment. Under the assumptions in the economic analysis, the development continues, with a reduction in the number of housing units. As a result, the public benefits described in the comment are also provided if Alameda whipsnake conservation efforts are undertaken. Therefore, the benefits of development referred to in the comment, while real, are the net of the economic welfare calculation measured in the economic analysis.

(38) *Comment*: A public comment noted the Faria Project site is already subject to a number of additional open space requirements, such as the protection of sensitive ridgelines, the presence of site stability problems on certain portions of the site, the need to site water tanks at higher elevations, and the requirement to achieve a balanced grading plan. These requirements have already been incorporated into the Faria Project design and adding critical habitat avoidance requirements will further constrain the project's ability to adhere to these requirements in a cost-effective manner. For example, the comment estimates that if whipsnake conservation leads to an unbalanced grading plan, additional costs of off-hauling or importing soil would be in excess of $30 million.

Our Response: The measures identified by the commenter are not a result of conservation measures being implemented for the Alameda whipsnake and were not cost associated with the designation. The economic analysis only identified potential costs associated with critical habitat. The costs identified by the commenter are part of the cost of doing business for the development industry.

(39) *Comment*: One comment stated that the EA fails to account for the potential ''signaling'' effects of critical habitat designation on other regulatory processes, such as those undertaken under the California Environmental Quality Act (CEQA). Any indication that federally-protected amenities are present on a property may raise a flag about negative environmental impacts and lead a local agency to take a more conservative perspective on the development project.

Our Response: Because of the fully co-extensive approach taken, the FEA assumes that all future development in critical habitat will require mitigation, regardless of whether a Federal nexus or some other mechanism (*e.g.*, a signal to local officials that the land has ecological value with protection implemented through CEQA) requires the action. As a result, the impact estimates summarized in Table I–1 of the FEA incorporate signaling effects.

(40) *Comment*: The DEA considers the economic effects of regulatory delay, but one comment states that the assumed 6 month regulatory delay resulting from whipsnake conservation requirements is an underestimate.

Our Response: The FEA discusses its calculation of delay costs in Section IV, page 31. We assume a delay period of 6 months based on average permitting times revealed by the relevant biological opinions. Actual delay costs to development activities may be higher or lower if actual delay periods are longer or shorter than 6 months.

(41) *Comment*: One comment noted that the DEA fails to account adequately for the effects of the *Gifford Pinchot* decision.

Our Response: Avoidance and mitigation requirements and mitigations costs used in the DEA were based on interviews with those familiar with the permitting process, as well as a comprehensive examination of the Service's consultation history. The DEA also assumes that avoidance and mitigation take place within the boundaries of proposed critical habitat. The Ninth Circuit has recently ruled (*Gifford Pinchot*, 378 F.3d at 1071) that the Service's regulations defining ''adverse modification'' of critical habitat are invalid. As a result, there is some uncertainty involved in considering the costs due to the fact that the consequences of designation are more difficult to predict as the Service cannot rely on decades of factual information based on prior experience.

(42) *Comment*: One comment stated that the DEA underestimates mitigation costs (*i.e.*, the purchase of credits from a mitigation bank) and suggests that these can run to $300,000 per mitigation acre.

Our Response: As noted in several places in Section IV of the analysis, the cost assumptions underlying the analysis are based on information provided by individuals involved in securing mitigation and are representative of current market conditions. The FEA uses market data collected from several private conservation banks in the Bay Area and central California regions to determine off-site mitigation prices by county (*see* Section IV, page 29). The FEA further recognizes that increased prices for mitigation lands will increase the economic impacts associated with critical habitat designation (*see* Section IV, page 29).

(43) *Comment*: With reference to the small business analysis in the DEA, one comment noted that Claremont Homes is a small business. Another comment stated that the DEA should consider effects on subcontractors, who are more likely than developers to be small businesses, impacted by a reduction in the number of housing units constructed.

Our Response: Because the economic analysis is probabilistic in nature, we are unable to identify the specific developers undertaking projects in proposed critical habitat in the next 20 years. However, the FEA estimates that three small developers are likely to be affected by whipsnake conservation efforts in proposed critical habitat in Contra Costa County (*see* Table VII–3 of the FEA). Assuming that Claremont Homes is defined as a ''developer'' and qualifies as a small business under 13 CFR 121.201, this organization likely accounts for one of the small firms identified in this table. We agree that some subcontractors to developers may meet the definition of a small business under the Regulatory Flexibility Act and may be affected by the impacts to development activities from critical habitat designation. However, these subcontractors are indirectly affected by whipsnake conservation efforts that directly affect the project proponent (*i.e.*, the developer) and, therefore, are beyond the scope of a Regulatory Flexibility Act analysis.

(44) *Comment*: One comment stated that under the scenario where housing units are lost in the Faria Project, the City of San Ramon will lose annual general revenue funds of approximately $121,000. This sum represents annual property taxes, sales and use taxes, transfer taxes, franchise fees, and vehicle license fees net of costs related to providing police services, public works and parks, and community service expenditures.

Our Response: We agree that a net loss of $121,000 to the City of San Ramon is possible. This loss represents a distributional impact affecting this specific area, as opposed to a social welfare effect; however, based on our analysis of the economic information we do not believe that there are any disproportionate economic impacts that

warrant exclusion pursuant to section 4(b)(2) of the Act at this time.

(45) *Comment*: One comment noted that the benefits of critical habitat designation are not quantified.

Our Response: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Service's approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which reflect the value of goods and services foregone in order to comply with the effects of the designation (*e.g.*, lost economic opportunity associated with restrictions on land use). Where data are available, the economic analyses do attempt to measure the net economic impact. However, no data was found that would allow for the measurement of such an impact, nor was such information submitted during the public comment period.

While the Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act, the Act explicitly states that it is the government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus, we believe that explicit consideration of broader social values for the subspecies and its habitat, beyond the more traditionally defined economic impacts, is not necessary as Congress has already clarified the social importance.

We note, as a practical matter, it is difficult to develop credible estimates of such values, as they are not readily observed through typical market transactions and can only be inferred through advanced, tailor-made studies that are time consuming and expensive to conduct. We currently lack both the budget and time needed to conduct such research before meeting our court-ordered final rule deadline. In summary, we believe that society places significant value on conserving any and all threatened and endangered species and the habitats upon which they depend and thus needs only to consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct.

(46) *Comment*: One comment asserted that delay costs need to include relevant returns to alternative investments.

Our Response: The delay costs calculated in the report result from capital being committed to fixed assets for a longer period than would be the case absent the whipsnake conservation requirements. For example, if capital is committed to maintaining a position in an option to purchase land, then this is a loss to the developer. In such a situation, there is no direct return on the option payment, and delay costs are measured accurately by the method of the FEA.

(47) *Comment*: One comment stated that the DEA relies too heavily on the Association of Bay Area Government (ABAG) projections that do not always take into account local development policies and regulations. For example, portions of Census Tract 450601 in Unit 3 are subject to Measure F, passed by the City of Pleasanton in 1993, which restricts density to 1 unit per 100 ac (40 ha). The comment states that because development is carried out subject to General Plan policies and other local regulations, the resulting development projections for this Census Tract are overstated.

Our Response: The projections produced by ABAG represent the best publicly-available data for this analysis. The entire area in question in Unit 3 is not subject to Measure F. In addition, this type of restriction is regularly modified through public process. However, if these data overstate development projections in the referenced Census Tract, then the impacts estimated in the FEA for this tract are overstated.

(48) *Comment*: One comment states that if the Faria Preserve is not developed, the Faria Ranch will continue to be grazed. As a result, the DEA should consider the environmental or social impact of alternative scenarios of leaving the Faria Project (within Census Tracts 345201 and 345202) in grazing uses.

Our Response: For the reasons discussed previously, the analysis assumes that the Faria project will go forward, either in its current form if no Alameda whipsnake conservation efforts are undertaken, or with some reduction in housing units if whipsnake concerns are addressed. Therefore, the economic impact of abandoning the development and maintaining current grazing practices is not relevant to the decision at hand.

(49) *Comment*: One comment states that the DEA should factor in the costs of the critical habitat designation to the City of San Ramon associated with public amenities, such as affordable housing, senior housing, and inefficiencies resulting from the repeating local regulatory processes that have been previously approved by voters.

Our Response: We agree that impacts to the City associated with various public amenities, including affordable housing and repeating local regulatory processes, are a possibility. However, no additional information has become available since the publication of the DEA that would allow us to quantify or monetize marginal effects of fewer affordable housing units or senior housing units resulting from Alameda whipsnake conservation efforts. In addition, no data exist to value inefficiencies created by additional regulatory process related to the whipsnake.

(50) *Comment*: One comment states that the economic analysis should consider the opportunity costs to the developer of undertaking the Faria Project. The developer estimates that the cost of foregone opportunity if the project does not go forward because of Alameda whipsnake conservation costs is approximately equal to the value of the project ($619,850,000).

Our Response: As discussed above, the most likely scenario is that the project will move forward with a reduction in the number of housing units. We recognize the significant investment made by the developer of this project; however, based on our analysis of the economic information we do not believe that there are any disproportionate economic impacts that warrant exclusion pursuant to section 4(b)(2) of the Act at this time.

Summary of Changes From Proposed Rule

In preparing the final critical habitat designation for the Alameda whipsnake, we reviewed and considered comments from the public on the proposed designation published on October 18, 2005 (70 FR 60607). We published a notice in the **Federal Register** on May 4, 2006 (71 FR 26311) announcing the availability of and soliciting comments on the DEA and the proposed rule. As a result of peer review and public comments received on the proposal and the DEA, we made changes to our proposed designation, as follows:

(1) We removed from the designation several isolated or small fragments of eucalyptus vegetation in Unit 6 that we determined did not sufficiently meet our criteria for designation and were not essential to the conservation of the Alameda whipsnake. We also removed 350 ac (142 ha) from Unit 6, which we

determined did not sufficiently meet our criteria for designation, and which had been addressed in a consultation under section 7 of the Act.

(2) We adjusted the boundaries of Units 2 and 6 to remove several areas dominated by eucalyptus trees that we do not consider to provide essential habitat and features for the subspecies, and to remove one area that was included in the proposed rule due to mapping error.

(3) Collectively, we excluded a total of approximately 46,998 ac (19,020 ha) of land from the proposed designation during the development of this final critical habitat designation (Table 1). For a detailed discussion of all exclusions and exemptions, please refer to Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation,'' as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known and using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements (PCEs), as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2) of the Act.) Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but not known to have been occupied at the time of listing will likely be essential to the conservation of the species and, therefore, included in the critical habitat designation.

The Service's Policy on Information Standards Under the Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic and may change over time due to vegetational succession, climate, or catastrophic events (*e.g.*, fire, landslides). As a result of habitat change, a species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to consider those physical and biological features (PCEs) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or

shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements required for the Alameda whipsnake are derived from the biological and ecological needs of the Alameda whipsnake as described in the Background section of this final rule and in previous listing and critical habitat rules for the subspecies. The primary constituent elements are based on the essential life history functions described below.

Space for Individual Population Growth and Normal Behavior

The Alameda whipsnake is most frequently recorded in close association with chaparral or scrub patches. These patches serve as the center of home ranges, and provide for concealment from predators and prey-viewing opportunities while foraging. Whipsnakes venture into adjacent grasslands or wooded habitats that exhibit, at a minimum, a partially open canopy. The open canopy character is believed to allow development of the primary lizard prey base used by the snake, and efficient thermoregulation and foraging activities. The Alameda whipsnake hunts by sight, holding its head off the ground to peer over grass or rocks for potential prey capture opportunities. Its specialization on lizard prey and mode of foraging require areas that both support abundant prey populations and provide prey-viewing and capture opportunities. Essential features of Alameda whipsnake habitat must therefore include consideration of the habitat needs of the prey species and for hunting and capture of prey. The Alameda whipsnake's prey base and capture opportunities are provided for by a ''scrub community.'' The particular arrangement of the landscape mosaic that is essential for the conservation of the Alameda whipsnake commonly consists of scrub patches within an open canopy of interspersed grasslands and rock lands (areas containing large percentage of rocks, rocky features, and/or rock-bearing soil types), but may include closed or nearly closed scrub areas, including rock lands, and a much lower complement of grasses. Typical scrub communities within the range of the Alameda whipsnake include diablan sage scrub, coyote brush scrub, and chamise chaparral (Swaim 1994, pp. 101, 123, 129), also classified as coastal scrub, mixed chaparral, and chamise-chaparral (Mayer and Laudenslayer 1998, pp. 104, 106, 108), and chamise, chamise-eastwood manzanita, chaparral whitethorn, and interior live oak shrub vegetation series as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988, pp. 28, 34), and California Wildlife Habitat Relationship System (CDFG 1998). These vegetation series are characterized as being less than 20 ft (6 m) in height with sparse ground cover (the interior live oak shrub vegetation series having variable ground cover), and form a nearly continuous cover of closely spaced shrubs often with intertwining branches. Sufficient light penetrates through the canopy to support an herbaceous understory. The soils are usually nutrient poor and rocky, and stands are best developed on steep slopes. Because of complex patterns of topographic, edaphic (soil), and climatic variations, these vegetation series form a mosaic pattern with inclusions of other vegetation series (blue oak, coast live oak, California bay, California buckeye, California annual grassland) or open spaces. The percentage cover for these vegetation series is variable depending on species composition and aspect. Vegetation-free zones about 3 ft (1 m) wide may be interspersed within these vegetation series, and extend around and out into adjacent vegetation series. These vegetation series occur on all slope aspects with patch sizes varying from square feet (meters) to square miles (kilometers) in size. The plant species associated with these vegetation series include, but are not limited to: Chamise (*Adenostoma* sp.), manzanita (*Arctostaphylos* sp.), *Ceanothus* sp., buckwheat (*Eriogonum* sp.), bush monkey flower (*Diplacus* sp.), toyon (*Heteromeles arbutifolia*), scrub oak (*Quercus* sp.), interior live oak (*Q. wislizenii*), canyon live oak (*Q. chrysolepis*), California coffeeberry (*Rhamnus* sp.), California buckeye (*Aesculus californica*), poison oak (*Toxicodendron diversilobum*), yerba santa (*Eriodictyon californicum*), and mountain mahogany (*Cercocarpus* sp.).

Swaim (1994, p. 111) found that core areas (areas of concentrated use by Alameda whipsnakes, based on telemetry and trapping data) were predominantly located on east, southeast, south, or southwest facing slopes and were characterized by open or partially-open canopy or grassland within 500 ft (150 m) of scrub vegetation. More recent analysis indicates that other slope aspects are also used to a lesser, albeit significant, extent (*see* responses to Comments #6 and #21). In early studies, Alameda whipsnakes were captured primarily where the canopy cover was open (less than 75 percent cover) or partially open (75 to 90 percent cover). However, more recent trapping efforts have collected Alameda whipsnakes in scrub ranging from nearly complete or completely closed canopies, to very open canopies with a few patches of high-quality scrub present (Swaim 2005b, p. 1). These core areas provide sun-shade mosaics that offer an opportunity for the snake to achieve temperatures necessary for foraging, while providing retreat from predators (Swaim 1994, p. 101). The open scrub habitat supports prey viewing opportunities, aiding foraging opportunities for this diurnal sight-hunting snake (Swaim 1994, p. 102). As previously mentioned, capture of spent females (*i.e.*, snakes which have recently laid eggs) within scrub communities (Swaim 2002a, p. 1) indicates scrub areas are in very close association with egg-laying sites, probably located in nearby grassland (Swaim 1994, p. 104–105). Because they provide the primary foraging, breeding, and shelter areas for Alameda whipsnake, scrub communities are considered a feature essential to the conservation of this subspecies.

Although much of Alameda whipsnake activity occurs in scrub communities, other types of vegetation are also used for foraging and are necessary for normal behavior, breeding, reproduction, population interaction, and dispersal. Core areas used by the snake can be sustained by very small patches of scrub embedded within a larger mosaic of other dominant vegetation types (Swaim 2005b, p. 1). Our review of available vegetation data and aerial imagery indicates that much of the distribution of Alameda whipsnake does not consist of large unbroken tracts of scrub community. The vegetation types adjacent to the scrub habitat that the Alameda whipsnake needs for foraging, dispersal, and population interactions includes annual grassland, blue oak-foothill pine, blue oak woodland, coastal oak woodland, valley oak woodland, eucalyptus, redwood, and riparian communities (*e.g.*, stream corridors). McGinnis (1992, p. 11) has documented Alameda whipsnakes using oak woodland/grassland habitat as a corridor between stands of northern coastal scrub. Alvarez (2005, pp. 23–24) found that 37 of 129 observations of whipsnakes were in a variety of habitats other than scrub, including annual grassland, oak woodland, riparian, and mixed evergreen forest.

Grassland habitats are used extensively by both sexes of Alameda

whipsnake during the breeding season. Males use these areas most extensively during the spring mating season, possibly in search and selection of mates (Swaim 1994, p. 93). Female use occurs after mating, possibly looking for egg-laying sites or for dispersal to scrub habitat (Swaim 1994, p. 95; Swaim 2002a, p. 1). Specifically, concentrated activity of gravid females, and hence the suspected location of egg-laying sites, was in grassland areas with scattered shrubs within 10 to 20 ft (3 to 6 m) of true scrub habitat (Swaim 1994, pp. 104–105). Therefore, woodland and annual grassland plant communities that are contiguous with scrub communities are also essential to the conservation of the Alameda whipsnake.

Food

The specific feeding and foraging habits of the Alameda whipsnake are relatively well known (Stebbins 1985, p. 182; Swaim 1994, p. 2). Alameda whipsnake prey extensively on western fence lizards, but also have been known to prey on western skinks (*Eumeces skiltonianus*) as well as frogs, birds, and other snakes (Stebbins 1985, p. 182; Swaim 1994, p. 82).

Shelter

Embedded within these scrub communities and adjacent habitats are areas consisting of rocky habitat (either rock outcrops or rock debris piles (talus)) and small rodent burrows; however, brush piles and deep soil crevices are also used by the snake (Swaim 1994, p. 104). These areas are essential for normal behavior, breeding, reproduction, dispersal, and foraging because they provide shelter from predators, egg-laying sites, over-night retreats, and winter hibernacula (Swaim 1994, p. 103), and are associated with areas that have increased numbers of foraging opportunities (Swaim 1994, p. 103). Swaim (1994, p. 81) found rock outcrops were typically abundant in core areas and observed Alameda whipsnakes mating in these outcrops. During the mating season, females remain near the retreat sites while males disperse throughout their home ranges (Swaim 1994, p. 94). Hammerson (1979, p. 269) observed the chaparral whipsnake, the close relative of Alameda whipsnake, emerging from burrows in the morning, basking in the sun, and retreating into burrows when the soil surface temperatures began to fall. Alameda whipsnakes retreat into winter hibernacula (*e.g.*, rodent burrows, crevices between rocks) around November and emerge in March (Swaim, p. 28). Trapping of gravid females close to scrub communities in grassland with scattered shrubs (Swaim 1994, pp. 71–72), and finding of spent females in true scrub communities (Swaim 2002a, p. 1) suggest that rock outcrops, talus, and burrows (mating habitats) need to be relatively close to scrub and nearby grassland habitat (suspected egg-laying habitats).

Dispersal Habitat

Dispersal habitats are essential for the conservation of Alameda whipsnake. Protecting the ability of Alameda whipsnake to move freely across the landscape in search of habitats is essential for: (1) Sustaining populations by providing opportunity for movement and establishment of home ranges by juvenile recruits, (2) maintaining gene flow by the movement of both juveniles and adults between subpopulations, and (3) allowing recolonization of habitat after fires or other natural events that have resulted in local extirpations. The available information on movements of other snakes of the family Colubridae is limited to a small minority of species, but indicates a general potential for significant mobility. Based on extensive radio-tracking data, Blouin-Demers and Weatherhead (2002, p. 1170) found that male and female ratsnakes (*Elaphe obsolete*) (a species similar in size and characteristics to the Alameda whipsnake within the same taxonomic family) travel up to 5 mi (8 km) from hibernacula to mate. Loughheed *et al.* (1999, pp. 1998–1999) found evidence of substantial genetic exchange among ratsnakes from local hibernacula less than 3.75 mi (6 km) apart, although gene flow over distances of 9.38 mi (15 km) and greater appears to be substantially less. Therefore, it is likely that medium-sized species of this family, such as the Alameda whipsnake, regularly move between areas up to a few miles (kilometers) apart. This is consistent with the distribution of vegetation types in portions of the Alameda whipsnake range, where the vegetation often has a more dense closed canopy on the northeast-facing slopes, and less dense open canopy on southwest-facing slopes. Recent trapping data has shown several instances of snakes residing in and moving through predominantly north-facing slopes within two of the six proposed critical habitat units (Swaim 2005c, p. 32; Swaim 2005d, p. 14). Habitat with a more open canopy would provide the greatest range of essential functions. However, closed-canopy areas are considered essential because they provide avenues of dispersal and interaction between subpopulations, and movement through such closed-canopy areas has been documented (Swaim 2002b, p. 44).

Additional trapping data has shown that the maximum distance between Alameda whipsnake observations and the nearest scrub is much larger, up to 4.5 mi (7.3 km), than either the home range diameter or average movements, suggesting more extensive use of grassland for either foraging or corridor movement (Swaim 2000, p. 5; Swaim 2003, Table 1; Swaim 2005b, p. 1; Alvarez 2005, p. 24). The scale of these grassland patches is on the order of several miles (kilometers) across, and movement of this degree would permit Alameda whipsnakes to disperse to other adjacent habitat. Large blocks of contiguous habitat, relatively uninterrupted by roads, structures, or other development, fulfill the essential need for interchange and interaction among individuals and subpopulations within the limited distribution of Alameda whipsnake. Thus, other vegetation (*e.g.*, annual grassland, blue oak-foothill pine, blue oak woodland, coastal oak woodland, valley oak woodland, eucalyptus, redwood, and riparian communities) adjacent to scrub habitat is considered a feature essential to the conservation of the Alameda whipsnake.

The characteristics and composition of the vegetation series adjacent to scrub or rocky habitats used by Alameda whipsnake for foraging, short- and long-distance dispersal, and mating can vary depending on location, topography, soils, and rainfall. The woodland vegetation series are comprised of slow growing, long-lived deciduous and evergreen trees 15 to 70 ft (4 to 21 m) tall with a mixed understory of grass and herbaceous vegetation or shrub vegetation. Some common species associated with the woodland vegetation series include: Blue oak (*Quercus douglasii*), valley oak (*Quercus lobata*), canyon live oak, coast live oak, California black oak (*Quercus kellogi*), interior live oak, madrone (*Arbutus menziesii*), foothill pine (*Pinus sabiniana*), California bay (*Umbellularia californica*), California buckeye, coyote brush, manzanita, gooseberry (*Ribes* sp.), redwood, and *Eucalyptus.* Some common species associated with the California annual grassland vegetation series include: Wild oats (*Avena* sp.), soft chess (*Bromus mollis*), *Brome* sp., barley (*Hordeum* sp.), and fescue (*Festuca* sp.). Some remnant perennial grasses may also be distributed within this grassland vegetation series comprised of species such as needlegrass (*Nassella* sp.), California onion grass (*Melica californica*), and California fescue (*Festuca californica*).

Herbaceous vegetation within the woodland and grassland vegetation series includes filaree sp., turkey mullein (*Eremocarpus* sp.), popcorn flower (*Plagiobothrys* sp.), and California poppy (*Eschscholtzia california*).

Primary Constituent Elements for the Alameda Whipsnake

Under our regulations, we are required to identify the known physical and biological features essential to the conservation of the Alameda whipsnake (PCEs). All areas finalized as critical habitat for the Alameda whipsnake are occupied, within the subspecies' historic geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the Alameda whipsnake and the requirements of the habitat necessary to sustain the essential life history functions of the subspecies, we have determined that the PCEs for the Alameda whipsnake are:

(1) *Scrub/shrub communities with a mosaic of open and closed canopy:* Scrub/shrub vegetation dominated by low-to medium-stature woody shrubs with a mosaic of open and closed canopy as characterized by the chamise, chamise-eastwood manzanita, chaparral whitethorn, and interior live oak shrub vegetation series (as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California ((Mayer and Laudenslayer 1988, pp. 28, 34), and California Wildlife Habitat Relationship System (CDFG 1998)), occurring at elevations from sea level to approximately 3,850 ft (1,170 m). Such scrub/shrub vegetation within these series forms a pattern of open and closed canopy used by the Alameda whipsnake for shelter from predators; temperature regulation, because it provides sunny and shady locations; prey-viewing opportunities; and nesting habitat and substrate. These features contribute to support a prey base consisting of western fence lizards and other prey species such as skinks, frogs, snakes, and birds.

(2) *Woodland or annual grassland plant communities contiguous to lands containing PCE 1:* Woodland or annual grassland vegetation series comprised of one or more of the following: Blue oak, coast live oak, California bay, California buckeye, and California annual grassland vegetation series (as identified in the Manual of California Vegetation (Sawyer and Keeler-Wolf 1995), A Guide to Wildlife Habitats of California (Mayer and Laudenslayer 1988), and California Wildlife Habitat Relationship System (CDFG 1998, pp. 28, 29, 118)) are PCE 2. This mosaic of vegetation is essential to the conservation of the Alameda whipsnake because it supports a prey base consisting of western fence lizards and other prey species such as skinks, frogs, snakes, and birds, and provides opportunities for: (1) Foraging by allowing snakes to come in contact with and visualize, track, and capture prey (especially western fence lizards along with other prey such as skinks, frogs, birds); (2) short and long distance dispersal within, between, or to adjacent areas containing essential features (*i.e.*, PCE 1 or PCE 3); and (3) contact with other Alameda whipsnakes for mating and reproduction.

(3) *Lands containing rock outcrops, talus, and small mammal burrows within or adjacent to PCE 1 and or PCE 2.* These areas are essential to the conservation of the Alameda whipsnake because they are used for retreats (shelter), hibernacula, foraging, and dispersal, and provide additional prey population support functions.

This designation is designed for the conservation of PCEs necessary to support the life history functions which were the basis for the proposal. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs.

Units are designated based on sufficient PCEs being present to support one or more of the species's life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat. Where a subset of the PCEs is present at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Methods

The methods used in determining the critical habitat boundaries are unmodified from those described in the proposed rule (70 FR 60607, p 60611) and are incorporated within by reference. See the proposed critical habitat designation for more information.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of the Alameda whipsnake. The material included data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; and regional GIS coverages. We designated no areas outside the geographical area presently occupied by the subspecies.

The criteria we utilized to designate critical habitat for Alameda whipsnake are based on the best scientific information available regarding the biology and ecology of the subspecies. In our determination of critical habitat for the Alameda whipsnake, we selected areas that possess the physical and biological features essential to the conservation of the subspecies and that may require special management considerations or protection. Application of these criteria (1) protects the best-quality habitat in areas where Alameda whipsnake occurs; (2) maintains the current geographical, elevational, and ecological distribution of habitat and the subspecies, thereby preserving genetic variation within the range of the Alameda whipsnake, and minimizes the effects of local extirpation; and (3) minimizes fragmentation by establishing unit boundaries that would result in the lowest possible ratio of perimeter/unit area, maintaining the essential need for Alameda whipsnake movement, dispersal, and interaction within the population. The specific habitat quality factors we considered in determining critical habitat included soil type, vegetation type, vegetation mosaic, and amount of included development (*e.g.*, roads, structures).

There is no firm information on the actual population size of Alameda whipsnake. In addition, there has been no analysis of the minimum viable population size necessary to maintain a stable or increasing population of the Alameda whipsnake. However, expert opinion is that the subspecies persists in relatively low numbers throughout its range compared to other snake species (McGinnis 1992, p. 24). These low numbers are also subject to variation as supported by monitoring studies such as Swaim (2006, pp. 1, 4), who found one site in which Alameda whipsnakes comprised 41 of 1,415 total snake captures with 178 traplines in 2005, an increase from 10 Alameda whipsnake captures in 2004 with 274 traplines. Moreover, irretrievable loss of occupied Alameda whipsnake habitat due to recent urban development is significant in areas adjacent to several of the critical habitat units. This loss of habitat has very likely resulted in a commensurate reduction in the population size for the Alameda whipsnake. Accordingly, the general pattern of habitat loss and fragmentation

was taken into consideration in the designation of critical habitat.

Connectivity has been applied as a criterion to those areas where designation of critical habitat would result in a relatively high potential for dispersal between and within units. The need for special management considerations was assessed where such management may be essential to enhance the connectivity or the integrity of high quality habitat within a unit.

We are designating critical habitat on lands we have determined are occupied at the time of listing and contain sufficient PCEs to support life history functions essential for the conservation of the subspecies. When determining critical habitat boundaries for this final rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack the PCEs for the Alameda whipsnake. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the proposed rule and are not designated critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the subspecies and/or the PCEs in adjacent critical habitat.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. We are excluding critical habitat from portions of Unit 4 based on the development of the ECCHCP/NCCP and lands within the East Bay Regional Park District. See Relationship of Critical Habitat to Habitat Conservation Plan Lands —Exclusions Under Section 4(b)(2) of the Act below.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the features essential to the conservation of the Alameda whipsnake that have been identified as PCEs may require special management considerations or protections. Special management is required when threats to the subspecies and features essential to its conservation exist and must be reduced by management to conserve the subspecies. The greatest threat to all six critical habitat units is continued urban development, which removes and fragments the features essential to the conservation of the subspecies. Second, fragmentation and destruction of features essential to the conservation of the subspecies, and thus the habitat, also results from road development and widening in all six critical habitat units. Alameda whipsnakes may experience direct mortality while moving across roads, and roads (*e.g.*, highways) may form partial or complete barriers to Alameda whipsnake movement. Special management may be needed to reduce the effects of development projects that remove or reduce the quality of features essential to the subspecies' conservation. Third, the features essential to the conservation of the subspecies are threatened directly and indirectly by the effects of fire suppression. Fire suppression exacerbates the detrimental effects of wildfires through the buildup of fuel (*i.e.*, underbrush and woody debris), creating conditions for slow-moving, hot fires that completely burn all sources of cover for the Alameda whipsnake. The highest intensity fires occur in the summer and early Fall, when accumulated fuel is abundant and dry. During this period, hatchling and adult Alameda whipsnakes are aboveground (Swaim 1994, p. 96), resulting in Alameda whipsnake populations being more likely to sustain heavy losses from high intensity fires. Fire suppression has led to the encroachment of non-indigenous and ornamental trees into grassland habitats, further increasing fuel loads in and around Alameda whipsnake habitat. Fire suppression has also led to the change of scrub communities from open/closed mosaics to closed canopy stands. As described above, Alameda whipsnakes prefer scrub communities consisting of an open/closed mosaic. The closed scrub canopy also results in a buildup of flammable fuels over time. Special management may be required to manage fuel loads to minimize the risk of catastrophic fire within the six critical habitat units.

Inappropriate grazing practices, such as overgrazing, may threaten the Alameda whipsnake. The scrub component of the vegetation mosaic may be affected by overgrazing as well as practices such as burning or bulldozing to remove scrub prior to grazing (McGinnis 1992, p. 21). Overgrazing may also reduce grass height or density to the point that Alameda whipsnakes are exposed to increased predation by hawks. Special management may be needed to manage grazing practices so they do not result in incompatible losses of scrub, and to restore scrub habitat to areas within the six critical habitat units that have been adversely affected by past overgrazing or associated land management.

In habitat areas that are not urbanized, construction and use of paved and unpaved roads and trails, and associated recreational activities (*e.g.*, on- and off-road motorized and non-motorized vehicles, camping, hiking, horseback riding) may result in both losses of habitat and direct mortality of Alameda whipsnakes by motorized and non-motorized vehicles. Special management may be needed to ensure that the locations and densities of such features and activities within all six critical habitat units are managed so effects on the Alameda whipsnake and its habitat are minimized.

Finally, Alameda whipsnakes are subject to increased predatory pressure from introduced species, such as rats (*Rattus* spp.), feral pigs (*Sus scrofa*), and feral and domestic cats (*Felis domestica*) and dogs (*Canis familiaris*). These additional threats become particularly acute where urban development immediately abuts Alameda whipsnake habitat. A growing movement to maintain feral cats in parklands is an additional potential threat to the Alameda whipsnake. EBRPD is currently facing public pressure to allow private individuals to maintain feral cats on park lands (DelVecchio 1997, p. A–15). Although the actual impact of predation under such situations has not been studied, feral cats are known to prey on reptiles, including yellow racers (*Coluber* sp. (Hubbs 1951, p. 183)), a fast, diurnal snake closely related to the Alameda whipsnake (Stebbins 1985, p. 180). Alameda whipsnakes may be adversely affected in areas that are adjacent to urban development because of the associated loss of cover habitats in combination with increased native and nonnative predators using these areas. Special management of nonnative predators may be required within all six critical habitat units.

Critical Habitat Designation

We are designating six units as critical habitat for the Alameda whipsnake. The critical habitat areas described below constitute our best assessment at this time of areas that have been determined to be occupied at the time of listing, contain the PCEs essential for the conservation of the subspecies and that may require special management. The six areas designated as critical habitat for the Alameda whipsnake are shown in Tables 1 and 2 below. Table 1 is a summary of the areas that meet the definition of critical habitat for the Alameda whipsnake and the areas excluded from critical habitat. Table 2 identifies the approximate area designated as critical habitat for the Alameda whipsnake by land ownership.

TABLE 1.—APPROXIMATE AREAS WITH ESSENTIAL FEATURES FOR THE ALAMEDA WHIPSNAKE AND THE AREA EXCLUDED FROM THE FINAL CRITICAL HABITAT DESIGNATION

Unit	Area with essential features		Area excluded from the final critical habitat designation	
	ac	ha	ac	ha
1	34,119	13,808	.....	.....
2	24,436	9,889	.....	.....
3	27,551	11,150	1,585	641
4	69,597	28,165	45,413	18,378
5A	24,723	10,005	.....	.....
5B	18,214	7,371	.....	.....
6	4,151	1,680	.....	.....
Total	202,791	82,068	46,998	19,020

TABLE 2.—CRITICAL HABITAT UNITS FOR ALAMEDA WHIPSNAKE

[Area (ac/ha) estimates reflect all land within critical habitat unit boundaries]

Unit	Federal		State		Local		Private		Total	
	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
1	.....	.....	15	6	8,108	3,281	25,997	10,520	34,119	13,808
2	.....	.....	.....	.....	4,386	1,775	20,050	8,114	24,436	9,889
3	.....	.....	.....	.....	404	163	25,562	10,345	25,966	10,508
4	23	9	13,855	5,607	.....	.....	9,348	3,783	23,225	9,399
5A	2,492	1,008	.....	.....	246	99	21,986	8,897	24,723	10,005
5B	.....	.....	.....	.....	361	146	17,854	7,225	18,214	7,371
6	.....	.....	720	291	265	107	3,166	1,281	4,151	1,680
Total	2,515	1,018	14,590	5,904	13,768	5,572	123,962	50,166	154,834	62,659

We present brief descriptions of all units, and reasons why they are essential for the conservation of the Alameda whipsnake below.

Unit 1: Tilden-Briones; Alameda and Contra Costa Counties (34,119 ac (13,808 ha))

Unit 1 is bordered approximately by State Highway 4 and the cities of Pinole, Hercules, and Martinez to the north; by State Highway 24 and the City of Orinda Village to the south; Interstate 80 and the cities of Berkeley, El Cerrito, and Richmond, to the west; and Interstate 680 and the City of Pleasant Hill to the east. The South end of Unit 1 abuts Unit 6. Land ownership within the unit includes approximately 8,108 ac (3,281 ha) of EBRPD lands, 15 acres (6 ha) of State land, and the remaining 25,997 ac (10,520 ha) under private ownership.

The unit contains a complex mosaic of grassland with woody scrub vegetation of several types (PCE 1 and PCE 2), as well as rock outcrops or other talus features (PCE 3) distributed throughout the unit with little habitat fragmentation. Alameda whipsnake records occur within the unit and are uniformly distributed throughout the unit (Swaim 2005a). The dates of Alameda whipsnake records span a time period from before the subspecies' listing to after the time of listing (1986 to present). Habitat fragmentation is minimal. Very limited development has occurred within the unit, with the exception of a few structures presumably associated with livestock management. The distribution of essential features throughout the unit and low fragmentation allows Alameda whipsnakes to utilize and freely disperse within the unit, making the overall population less vulnerable to local extirpation which could result from fire, landslide, or some other natural event (*e.g.*, drought, disease). The unit is designated critical habitat because it contains features essential to the conservation of the Alameda whipsnake, is currently occupied, and represents the northwestern portion of the subspecies' range and one of five population centers. The special management actions that may be required within the unit include prescribed burns and management of grazing activities to maintain a mosaic of open habitat. Additional special management actions that may be required for this unit include management of trespass, unauthorized trail construction, dumping, and/or feral animals, and other activities or situations associated with the urban or recreational interface.

Unit 2: Oakland-Las Trampas; Contra Costa and Alameda Counties (24,436 ac (9,889 ha))

Unit 2 is located south of State Route 24, north of Interstate 580, east of State Route 13, and west of Interstate 680 and the cities of Danville, San Ramon, and Dublin. The North edge of Unit 2 abuts Unit 6. Land ownership includes 4,386

ac (1,775 ha) of EBRPD and East Bay Municipal Utilities District lands and 20,050 ac (8,114 ha) under private ownership.

Unit 2 contains a range of vegetation (PCE 1 and PCE 2), soil types, and rocky features (PCE 3) essential to the conservation of the subspecies, supports viable Alameda whipsnake populations, and has minimal development such as roads and structures (Swaim 2005a). Areas with development or reduced soil and vegetation characteristics have not been included in the critical habitat for this unit. Unit 2 essential features that contain more dense woodland habitat may be subject to special management considerations, such as prescribed burns, to improve the habitat quality and enhance the potential for Alameda whipsnake movement between units. Additional special management actions that may be required throughout this unit include management of trespass, unauthorized trail construction, dumping, and/or feral animals, and other activities or situations associated with the urban or recreational interface. Alameda whipsnake occurrences have been documented by multiple records within the unit as well as adjacent to the unit (Swaim 2005a). Dispersal of snakes between Units 2 and 1 is possible only through Unit 6, and impediments to such movement do not appear to be present. Unit 2 is included in the critical habitat because it contains features essential to the conservation of the Alameda whipsnake, is currently occupied by the subspecies, and represents the central distribution of Alameda whipsnake and one of the five population centers.

Unit 3: Hayward-Pleasanton Ridge; Alameda County (25,966 ac (10,508 ha))

Unit 3 is located immediately to the west of Interstate 680 and to the south of Interstate 580. Land ownership includes 404 ac (163 ha) of EBRPD land and 25,562 ac (10,345 ha) privately owned land. We have excluded the Stonebrae Country Club project site from critical habitat in this unit (*see* Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act, below).

Unit 3 contains the mosaic of scrub and chaparral vegetation and rocky outcrops (PCE 1, PCE 3) considered essential to the conservation of the subspecies. The unit also includes variation in vegetation patch size, abundant edge between grassland and woodland, and a minimal amount of development or planned development. The area supports scrub and rock outcrop features essential for Alameda whipsnake. The Alameda whipsnake records within this unit are associated with Gaviota rocky sandy loams in particular, which likely provide talus (PCE 3), and appear to coincide in aerial imagery to scrub or chaparral vegetation preferred by Alameda whipsnake. Vegetation is largely of oak woodland community of variable densities (PCE 2) and statures (trees, shrubs) interspersed with grassland. Some peripheral portions of habitat around this unit were not included as critical habitat due to the high degree of development-related disturbance and fragmentation of the habitat. The unit is included in the designated critical habitat because it contains features essential to the conservation of the Alameda whipsnake; is currently occupied by the subspecies (Swaim 2005a); and represents the southwestern portion of the subspecies' range and one of the five population centers. The special management actions that may be required throughout this unit include management of controlled burns and grazing, trespass, unauthorized trail and road construction, dumping, and/or feral animals, and other activities or situations associated with the urban or recreational interface.

Unit 4: Mount Diablo-Black Hills; Contra Costa and Alameda Counties (23,225 ac (9,399 ha))

This unit encompasses Mount Diablo State Park and surrounding lands, and is largely within Contra Costa County except a small portion that is within Alameda County. Lands are owned by the Bureau of Land Management (23 ac (9 ha)), State Department of Parks and Recreation (13,855 ac (5,607 ha)), and private landowners (9,348 ac (3,783 ha)). We have excluded East Bay Regional Park District lands and lands covered by the draft East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan from critical habitat in this unit (*see Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act*'', below).

Numerous Alameda whipsnake observations (*i.e.*, greater than 90 records from 1972 to 2004) occur throughout the area, many of which are associated with dense rock outcrops (PCE 3) and chaparral, scrub, and oak woodland (PCE 1, PCE 2). The pattern of woody vegetation with grassland and rock outcrops forms an intricate landscape mosaic that is highly functional habitat for the Alameda whipsnake. The vegetation and soil characteristics, the mosaic habitat pattern, the abundance of Alameda whipsnake records, and the lack of surrounding development and relative absence of roadways, together indicate that this unit likely provides some of the very highest quality and largest contiguous blocks of habitat within the range of the subspecies, as well as some of its most robust populations. Special management, such as prescribed burns, may be required for portions of the unit with dense vegetation. The special management actions which may be required throughout this unit include management of controlled burns and grazing, trespass, unauthorized trail and road construction, dumping, and/or feral animals, and other activities or situations associated with the urban or recreational interface. The unit is included in designated critical habitat because it contains features essential to the conservation of the Alameda whipsnake, is occupied by the subspecies (Swaim 2005a), and represents the northeastern portion of the subspecies' range and one of the five population centers.

Unit 5A: Cedar Mountain; Alameda and San Joaquin Counties (24,723 ac (10,005 ha))

Unit 5A is located east of Lake Del Valle along Cedar Mountain Ridge and Crane Ridge to Corral Hollow west of Interstate 580. Land ownership within this unit includes approximately 2,492 ac (1,008 ha) of Department of Energy land, 246 ac (99 ha) of EBRPD land, and 21,986 ac (8,897 ha)) are privately owned.

The vegetation pattern within this unit consists of various woodland, scrub, and/or chaparral communities on northeast-facing slopes (PCE 1, PCE 2). Rock bearing soils which are associated with multiple Alameda whipsnake records (*e.g.* Vallecitos rocky loam) as well as rock lands are abundant, indicating the presence of PCE 3. Open, grassland-dominated communities are prominent on southwest-facing slopes, but there is also a significant component of woodland habitat on these slopes. Significant areas of vegetation types known to support Alameda whipsnake are present, including coastal oak, chamise-chaparral, mixed chaparral, blue-oak-foothill pine woodland, blue oak woodland, valley oak woodland, and montane hardwood. About 50 Alameda whipsnake records from 1973 through 2002 are known in this unit (Swaim 2005a). In most instances, the boundaries for critical habitat designation correspond to natural breaks in plant communities, habitat quality, and/or landform (ridgelines, water features). A moderate number of light duty roads (*e.g.*, paved or unpaved

lightly used) are present within the unit, although there are very few structures or other land modifications. Special management, such as prescribed burns, may be required for portions of the unit with dense vegetation. The special management actions that may be required throughout this unit include management of grazing, trespass, unauthorized trail and road construction, dumping, and/or feral animals, and other activities or situations associated with urban or recreational interface. The unit is included in designated critical habitat because it contains features essential to the conservation of the Alameda whipsnake, is currently occupied by the subspecies, and represents the southernmost and easternmost distribution of Alameda whipsnake and one of five population centers for the subspecies.

Unit 5B: Alameda Creek; Alameda and Santa Clara Counties (18,214 ac (7,371 ha))

This unit is located northeast of Calaveras Reservoir, south of the town of Sunol, including the area along Wauhab Ridge in Alameda County and Oak Ridge in Santa Clara County. Alameda Creek is located at the west margin of the unit, and the unit contains the Sunol Regional Wilderness and Camp Ohlone Regional Park (approximately 361 ac (146 ha)), which are managed by the East Bay Regional Park, with the remaining 17,854 ac (7,225 ha) in private ownership. Vegetation is a mix of blue oak—foothill pine and annual grassland with a significant amount of woodland patches. Coastal live oak is present in the vicinity of Lleyden Creek. Soil types in which Alameda whipsnakes are found dominate the unit. This subunit contains six Alameda whipsnake records documented between 1972 and 2000 (Swaim 2005a). Significant areas of vegetation types known to support Alameda whipsnake are present, including coastal oak, chamise-chaparral, mixed chaparral, blue oak—foothill pine woodland, blue oak woodland, valley oak woodland, and montane hardwood interspersed with rock outcrops or talus (PCEs 1, 2, 3). The boundaries for critical habitat designation correspond to natural breaks in plant communities, soil type, and or landform. A moderate number of light roads are present within the unit, although there are very few structures or other land modifications. Development within or adjacent to the unit is minimal. As a result of this low development pressure, the survey efforts for the Alameda whipsnake in this unit have not been as extensive as in the other units. Special management, such as prescribed burns, may be required for portions of the unit with dense vegetation. Other special management actions which may be required throughout this unit includes management of grazing, unauthorized trail and road construction, dumping, and/or feral animals, control and other activities or situations associated with urban or recreational interface. The unit is included in designated critical habitat because it contains features essential to the conservation of the Alameda whipsnake, is currently occupied, and represents the southern most distribution of Alameda whipsnake and one of the five population centers for the subspecies.

Unit 6: Caldecott Tunnel; Contra Costa and Alameda Counties (4,151 ac (1,680 ha))

This critical habitat unit lies between Units 1 and 2, along the Alameda and Contra Costa County lines. Land ownership within this unit includes 265 ac (107 ha) of East Bay Regional Park lands, 720 ac (291 ha) of State, and 3,166 ac (1,281 ha) in private lands.

The unit is bounded by dense urban development to the east and west. However, the vegetation and soil types that are known to support Alameda whipsnake are dominant throughout the unit (PCEs 1, 2, 3). About eight Alameda whipsnake records are known from the unit between 1990 and 2002 (Swaim 2005a). Special management considerations in this unit include possible consolidation of existing roads, or limiting additional road construction in order to preserve a corridor function in this unit as a consequence of the restricted width of the unit and the current presence of a moderate number of roads. Prescribed burns may also be required to maintain the habitat mosaic considered essential. The unit is included in designated critical habitat because it contains features essential to the conservation of the Alameda whipsnake, is currently occupied, and represents the last remaining habitat connecting Unit 1 and Unit 2, which are two of the five population centers for the subspecies. Maintaining connectivity between units allows for dispersal between units for the subspecies and allows for genetic exchange among all three units.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing a proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal

conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected, and the Federal agency has retained discretionary involvement or control over the action, or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Alameda whipsnake or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Alameda Whipsnake and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service applies an analytical framework for Alameda whipsnake jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the Alameda whipsnake. The section 7(a)(2) analysis is focused not only on these populations, but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the Alameda whipsnake in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the subspecies as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting Alameda whipsnake critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the subspecies. Generally, the conservation role of Alameda whipsnake critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the subspecies.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the Alameda whipsnake is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the Alameda whipsnake include, but are not limited to:

(1) Actions that would reduce the total amount of shrub/scrub, oak woodland, or grassland communities. Such activities could include, but are not limited to: Construction of paved or unpaved roads, buildings or other commercial or urban development, recreational facilities, or any other land use that eliminates the natural vegetation types and rock lands that provide PCEs. These actions reduce the available habitat for Alameda whipsnake, and result in direct loss of or cumulative adverse effects to

individual snakes, their life cycles and their populations, or their prey base.

(2) Actions that would significantly modify the vegetation mosaic pattern. Such activities could include, but are not limited to: Loss of scrub due to livestock overgrazing, scrub removal through bulldozing or burning; loss of sun-shade mosaic due to fire suppression; introduction or spread of non-indigenous plants; prescribed fire; timber harvest; off-road vehicle or other recreational use; and other land disturbances. These activities could reduce the quality of habitat necessary for the growth and reproduction of the Alameda whipsnake provided by sun-shade mosaic, which is necessary to sustain snakes and their prey populations and also cause direct loss of or cumulative adverse effects to individual snakes.

(3) Actions that would result in complete loss of habitat or would impede snake movement by forming partial or complete barriers through or between habitat areas. Such activities could include, but are not limited to: Road construction; road improvement, right-of-way designation, installation of new radio equipment and facilities, commercial or urban development, or any other land use within corridors that connect units. These activities could eliminate foraging, resting, or denning habitat, as well as reduce movement corridors essential for genetic exchange and dispersal of Alameda whipsnake. Such activities could also lead to increased road kill incidences for the subspecies.

(4) Actions that would significantly alter or modify the functioning of rock lands, talus, or small mammal burrows as Alameda whipsnake refugium or prey production. Such activities could include, but are not limited to application of rodenticide or other chemicals, mining, grading, excavation, or fill. Activities in these areas could result in direct losses of, or cumulative adverse effects to, individual Alameda whipsnakes, their life cycles, their populations, and their prey base.

(5) Actions that would result in degraded chaparral scrub or oak woodland communities. Such activities could include, but are not limited to: Urban development, unmanaged fire suppression activities, and livestock overgrazing. These activities could reduce the quality of habitat essential for reproduction, growth, or shelter of the Alameda whipsnakes.

(6) Actions that result in a discharge of dredged or fill material into waters of the United States by the Army Corps under section 404 of the Clean Water Act. Such activities could include, but are not limited to, placement of fill into wetlands or channelization of stream corridors. These activities could eliminate or reduce the habitat essential for the reproduction, feeding, or growth of Alameda whipsnake. The functions of riparian areas as refugium from fire or as dispersal corridors for snakes could be adversely affected by these actions.

We consider all of the units designated as critical habitat, as well as those that have been excluded or not included, to contain features essential to the conservation of the Alameda whipsnake. All units are within the geographic range of the subspecies, all were occupied by the subspecies at the time of or since listing, and all are likely to be used by the Alameda whipsnake. Federal agencies already consult with us on activities in areas currently occupied by the Alameda whipsnake, or if the subspecies may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the Alameda whipsnake. If you have questions regarding whether specific activities may constitute adverse modification of critical habitat, contact the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002). Stein *et al.* (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (*i.e.*, 90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

The Service's Four Cs philosophy—conservation through communication, consultation, and cooperation—is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private land owners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of HCPs.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to live on their property, and there is mounting evidence that some regulatory actions by the Federal government, while well-intentioned and required by law, can

under certain circumstances have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (*e.g.*, reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002).

The Service believes that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species' recovery, and provide a superior level of conservation to the designation of critical habitat alone. For example, less than 17 percent of Hawaii is federally owned, but the State is home to more than 24 percent of all federally listed species, most of which will not recover without State and private landowner cooperation. Castle and Cooke Resorts, LLC, which owns 99 percent of the island of Lanai, entered into a conservation agreement with the Service. The conservation agreement provides conservation benefits to target species through management actions that remove threats (*e.g.*, axis deer (*Cervus axix*, mouflon sheep (*Ovis gmelini*), rats, and invasive nonnative plants) from the Lanaihale and East Lanai Regions. Specific management actions include fire control measures, nursery propagation of native flora (including the target species), and planting of such flora. These actions will significantly improve the habitat for all currently occurring species. Due to the low likelihood of a Federal nexus on the island, we believe that the benefits of excluding the lands covered by the Memorandum of Agreement (MOA) exceeded the benefits of including them. As stated in the final critical habitat rule for endangered plants on the Island of Lanai:

> On Lanai, simply preventing ''harmful activities'' will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. While the impact of providing these incentives may be modest in economic terms, they can be significant in terms of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service's ability to further the recovery of these endangered plants.

Conservation agreements with non-Federal landowners (*e.g.*, HCPs, contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854, December 2, 1996).

Exclusions Under Section 4(b)(2) of the Act

After consideration under section 4(b)(2) of the Act, the following areas of essential habitat have been excluded from critical habitat for the Alameda whipsnake: Draft East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan; those East Bay Regional Park District lands within Unit 4 of the proposed critical habitat; and the Stonebrae Country Club project site. A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs that follow.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species, or unoccupied areas that are essential to the conservation of the species, are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards, and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater

benefits to the recovery of a species. However, we believe the conservation achieved through implementing regional habitat conservation plans or other regional habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, Federal agencies are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan which considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below on the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the Alameda whipsnake. In general, the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, regional HCPs have significant public input, and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: That designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions we are making in this rule, because these areas were included in the proposed rule as having habitat containing the features essential to the conservation of the species. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat. Additionally, the purpose normally served by the designation of critical habitat for the Alameda whipsnake of informing State agencies and local governments about areas which would benefit from protection and enhancement of habitat is already well established among the Federal, State, and local government agencies in those areas that we are excluding from critical habitat in this rule on the basis of other existing habitat management protections.

The information provided in this section applies to all the discussions below concerning the benefits of inclusion and exclusion of critical habitat.

Benefits of Excluding Lands With HCPs or Other Approved Management Plans From Critical Habitat

The benefits of excluding lands with HCPs or other approved management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Most HCPs and other conservation plans take many years to develop and, upon completion, are consistent with the recovery objectives for listed species covered within the plan area. In fact, designating critical habitat in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in plans targeting listed species' conservation.

Many conservation plans provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within approved management plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. Such a consultation would review the effects of all activities covered by the HCP which might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (*see* definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act, and would be reviewed for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act

Draft East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (ECCHCP/NCCP)

The draft ECCHCP/NCCP was released to the public on September 6, 2005. We expect a finalized plan before the end of December 2006. Participants in this HCP include the County of Contra Costa; the cities of Brentwood, Clayton, Oakley, and Pittsburg, California; and the Contra Costa Water District. The draft ECCHCP/NCCP encompasses the eastern portion of

Contra Costa County from approximately west of Concord to Sand Mound Slough and Clifton Court Forebay on the east. The draft ECCHCP is also a subregional plan under the State's Natural Community Conservation Planning (NCCP) process and was developed in cooperation with the California Department of Fish and Game. The draft ECCHCP/NCCP identifies the Alameda whipsnake as a covered species and has identified areas where growth and development are expected to occur, as well as several conservation measures, including: (1) Preserving between 12,254 and 13,983 ac (4,959 to 5,659 ha) of Alameda whipsnake habitat; (2) preserving major habitat connections linking existing public lands; (3) incorporating a range of habitat and population management and enhancement measures including, but not limited to, monitoring, prescribed burning, exotic plant control, native grass restoration, and recreational use controls; (4) fully mitigating the impacts to covered species; (5) maintaining ecosystem processes; and (6) contributing to the recovery of covered species. When the conservation measures are implemented, they will benefit Alameda whipsnake conservation by preserving and restoring or enhancing habitat for the species. We expect that the draft ECCHCP/NCCP, when finalized, will provide substantial protection for all three of the primary constituent elements for the Alameda whipsnake, and that protected lands will receive the special management they require through funding mechanisms that will be implemented under the ECCHCP/NCCP. In total, we are excluding approximately 42,665 ac (17,265 ha) of land from Unit 4 in Contra Costa County.

Benefits of Exclusion Outweigh the Benefits of Inclusion

The conservation measures in the ECCHCP/NCCP will provide substantial protection of the PCEs and special management of essential habitat for the Alameda whipsnake on ECCHCP conservation lands. We expect the ECCHCP/NCCP to provide a greater level of management for the Alameda whipsnake on private lands than would designation of critical habitat on private lands due to its large scale planning effort and cooperation with local landowners rather than the piece meal approach of section 7 consultation process. Moreover, inclusion of these non-Federal lands as critical habitat would not necessitate additional management and conservation activities that would exceed the approved ECCHCP/NCCP and its implementing agreement as these measures would be identified and be part of the conservation strategy identified in the ECCHCP/NCCP. As a result, we do not anticipate any action on these lands would destroy or adversely modify the areas designated as critical habitat. Therefore, we do not expect that including those areas in the final designation would lead to any changes to actions on the conservation lands to avoid destroying or adversely modifying that habitat.

The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local jurisdiction and project proponent in the development of the draft ECCHCP/NCCP. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term conservation of the subspecies, are still accomplished from material provided on our Web site and through public notice-and-comment procedures required to establish the ECCHCP/NCCP. For these reasons, we believe that designating critical habitat has little benefit in areas covered by the draft ECCHCP/NCCP.

We have reviewed and evaluated the conservation measures identified for the Alameda whipsnake identified in the draft ECCHCP/NCCP as well as the benefits of inclusion and exclusion of critical habitat for the Alameda whipsnake. Based on this evaluation, we find that the benefits of exclusion of the lands containing features essential to the conservation of the Alameda whipsnake in the planning area for the draft ECCHCP/NCCP outweigh the benefits of including those portions of the draft ECCHCP/NCCP area within Unit 4 as critical habitat.

Exclusion Will Not Result in Extinction of the Species

We have determined that this exclusion would not result in the extinction of the subspecies because the draft ECCHCP/NCCP seeks to: (1) Preserve between 12,254 to 13,983 ac (4,959 to 5,659 ha) of Alameda whipsnake habitat; (2) preserve major habitat connections linking existing public lands; (3) incorporate a range of habitat and population management and enhancement measures including monitoring, prescribed burning, and recreational use controls; (4) fully mitigate the impacts to covered species; (5) maintain ecosystem processes; and (6) contribute to the recovery of covered species.

Actions which might adversely affect the subspecies would be minimized and coordinated large scale conservation measures would be implemented through the ECCHCP/NCCP. The ECCHCP/NCCP would undergo an intra-Service consultation under section 7 of the Act. The jeopardy standard of section 7 of the Act, and routine implementation of habitat preservation through the section 7 process, provide assurance that the subspecies will not go extinct. In addition, the subspecies is protected from the take prohibitions under section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

The subspecies occurs on lands protected and managed either explicitly for the subspecies or its habitat, or indirectly through more general objectives to protect natural values. This factor acts in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acts in concert with protections afforded the subspecies by the remaining critical habitat designation for the subspecies, which leads us to find that exclusion of these lands will not result in extinction of the Alameda whipsnake. We do not believe that this exclusion would result in the extinction of the subspecies because the subspecies is found in other areas, and the ECCHCP/NCCP provides for coordinated monitoring and conservation of rare, threatened, and endangered species, including the Alameda whipsnake.

Relationship of Critical Habitat to Approved Management Plans—Exclusions Under Section 4(b)(2) of the Act

East Bay Regional Park District Lands

The EBRPD manages 65 regional parks, recreation areas, wilderness, shorelines, preserves, and land bank areas covering over 95,000 ac (34,446 ha) in Alameda and Contra Costa Counties. The EBRPD Board of Directors adopted the EBRPD Plan on December 17, 1996, under Resolution Number 1996–12–349. The EBRPD Plan provides for monitoring and conservation of rare, threatened, and endangered species, including the Alameda whipsnake. Species conservation efforts take precedence over other park activities if EBRPD activities are determined to have a significant adverse effect on rare, threatened, or endangered species (EBRPD 1997).

Benefits of Exclusion Outweigh the Benefits of Inclusion

We expect the EBRPD to provide substantial protection of the PCEs and

special management of essential habitat for the Alameda whipsnake on EBRPD lands within Unit 4. We expect the EBRPD to provide a greater level of management for the Alameda whipsnake on private lands than would designation of critical habitat on private lands. Moreover, inclusion of these non-Federal lands as critical habitat would not necessitate additional management and conservation activities beyond those already in place by the EBRPD. The EBRPD Plan provides for monitoring and conservation of rare, threatened, and endangered species, including the Alameda whipsnake. EBRPD has been actively involved in acquisition, preservation, and management of whipsnake habitat in Alameda and Contra Costa Counties, and has been a participant over the last 14 years on the Alameda whipsnake recovery team. Vegetation management using several methods, research on the effects of such management, restricting access to some sensitive areas, and habitat enhancement activities on mitigation lands are special management actions the EBRPD has used and continues to use for the conservation of the Alameda whipsnake. Examples of such efforts in Unit 4 include the Clayton Ranch and Shell Pipeline Resource Enhancement Projects. Nearly 90 percent of the EBRPD land holdings are protected and managed as natural parklands, thereby providing protection for the PCEs (Bobzien 2005). As a result, we do not anticipate any action on these lands would destroy or adversely modify the areas designated as critical habitat. Therefore, we do not expect that including those areas in the final designation will lead to any changes to actions on the conservation lands to avoid destroying or adversely modifying that habitat.

The exclusion of these lands from critical habitat would help preserve the partnerships that we have developed with the EBRPD. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term conservation of the subspecies, are still accomplished from material provided on our Web site and through public notice-and-comment procedures. The public also has been informed through the public participation that occurred during the development of the proposed designation and previous listing and critical habitat actions for the subspecies. For these reasons, we believe that designating critical habitat within Unit 4 has little benefit in areas managed by the EBRPD.

We have evaluated the conservation measures for Alameda whipsnake identified by the EBRPD. Based on this evaluation, we currently find that the benefits of excluding those portions of Unit 4 considered essential to the conservation of the Alameda whipsnake within the boundaries of the EBRPD land outweigh the benefits of including those portions of land as critical habitat.

Exclusion Will Not Result in Extinction of the Subspecies

We have determined that exclusion of EBRPD lands within Unit 4, although considered occupied habitat, would not result in the extinction of the Alameda whipsnake. Actions that might adversely affect the subspecies are expected to have a Federal nexus, and would thus undergo a consultation with the Service under section 7 of the Act. The jeopardy standard of section 7 of the Act, and routine implementation of habitat preservation through the section 7 process, provide assurance that the subspecies will not go extinct. In addition, the subspecies is protected by the take prohibitions under section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

The subspecies occurs on lands protected and managed either explicitly for the subspecies or its habitat, or indirectly through more general objectives to protect natural values. This factor acts in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acts in concert with protections afforded the subspecies by the remaining critical habitat designation for the subspecies, which leads us to find that exclusion of these lands will not result in extinction of the Alameda whipsnake. We do not believe that this exclusion would result in the extinction of the subspecies because the subspecies is found in other areas, and the EBRPD Plan provides for monitoring and conservation of rare, threatened, and endangered species, including the Alameda whipsnake. EBRPD has been actively involved in acquisition, preservation, and management of whipsnake habitat in Alameda and Contra Costa Counties, and has been a participant over the last 14 years on the Alameda whipsnake recovery team. Vegetation management using several methods, research on the effects of such management, restricting access to some sensitive areas, and habitat enhancement activities on mitigation lands are special management actions the EBRPD has used and continues to use for the conservation of the Alameda whipsnake. Examples of such efforts in Unit 4 include the Clayton Ranch and Shell Pipeline Resource Enhancement Projects. Nearly 90 percent of the EBRPD land holdings are protected and managed as natural parklands, thereby providing protection for the PCEs (Bobzien 2005). Species conservation efforts take precedence over other park activities if EBRPD activities are determined to have a significant adverse effect on rare, threatened, or endangered species (EBRPD 1997).

Stonebrae Country Club Project Unit 3

A portion of Unit 3 warrants exclusion from the final critical habitat designation. Approximately 1,609 ac (651 ha) has been considered under a Biological Opinion for the Stonebrae Country Club project site (formerly Blue Rock Country Club) issued by the Service on July 12, 2002 (Service File Number 1–1–01-F–0275). The project will develop a golf course, residences, and associated infrastructures, on 302 ac (122 ha), about 1,197 ac (484 ha) will be dedicated as open space, and 110 ac (45 ha) will be managed as native vegetation buffer between the golf course and open space. The open space contains PCEs identified in this final rule, and will be managed to protect those features. Measures will be undertaken to enhance the quality of this habitat, reduce the effects of adjacent development on Alameda whipsnake, and monitor and adaptively manage the habitat for the Alameda whipsnake. The various measures include but are not limited to management of vegetation, grazing, fuels reduction, and unauthorized vehicle access. This management will assist in maintaining the essential features found on these lands. Based on information received during the public comment period and GIS analysis, the area we evaluated for exclusion is 1,585 ac (641 ha), which is the area of the project which overlaps the proposed critical habitat designation.

Benefits of Inclusion

There is minimal benefit from designating critical habitat for Alameda whipsnake within the open space or buffer areas because these lands are already managed for the conservation of the Alameda whipsnake under the Biological Opinion. A possible benefit of designation as critical habitat would be to educate the public, including landowners, regarding the conservation values of these areas and the habitat they support. This may provide incentive towards conservation efforts of other parties by delineating areas of high conservation value for Alameda whipsnake. However, the area will

already be dedicated to the EBRPD and will be managed as public open space in perpetuity, and funding for such management has been provided. The education benefits of critical habitat designation will largely be achieved through the proposed rule, public comment period, and responses. Accordingly, the incremental educational benefits of designating critical habitat on this property are small.

Designation of critical habitat on the property would require consultation with us for any action undertaken, authorized, or funded by a Federal agency that may affect the species or its designated critical habitat. However, such a formal consultation has already been completed, and includes sufficient, specific management considerations to ensure the future protection and management of this habitat, as well as a requirement for reinitiation of consultation should the amount of incidental take be exceeded, new information reveals effects of the agency action on Alameda whipsnake in a manner or extent not considered in the Biological Opinion, or the agency action is subsequently modified in a manner that causes an effect other than that considered in the Biological Opinion. Therefore, the benefit from additional consultation resulting from designation of critical habitat of this property is minimal.

Benefits of Exclusion

While a consultation requirement associated with critical habitat on an already-protected open space area would provide little benefit, it would consume financial and staff resources that could be used for other activities such as on-the-ground management of listed or sensitive species, including the Alameda whipsnake. One benefit of exclusion would be to eliminate the need for a separate analysis of the effects of an action on critical habitat in future consultations. The open space areas already are currently managed through proposed conservation measures described in a Mitigation and Monitoring Plan (MMP), which will ensure that the 1,197 ac (484 ha) of habitat will be managed in perpetuity through the application of specific measures to preserve and optimize habitat values for the Alameda whipsnake. Such measures include a Resource Management Plan for livestock grazing and scrub management, rock outcrop augmentation, design features for the golf course and paths, construction fencing, snake trapping and relocation, and reporting. These measures sufficiently address all special management considerations that would apply to designated critical habitat. These measures are required to be implemented as they are part of the project description in the Biological Opinion. Therefore, the benefits of exclusion include relieving the regulatory burden and cost that might be imposed by critical habitat designation, which could divert resources from substantive resource protection efforts elsewhere to procedural regulatory efforts where such protection has already been achieved.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act and the Federal District Court decision concerning critical habitat (*Center for Biological Diversity* v. *Norton,* Civ. No. 01–409 TUC DCB D. Ariz. Jan. 13, 2003), we have determined that the benefits of excluding the Stonebrae Country Club project area as critical habitat outweigh the benefits of including it as critical habitat for the Alameda whipsnake. The area where the whipsnake is known to occur is already managed to protect and enhance habitat specifically for the Alameda whipsnake (*e.g.*, rock outcrop augmentation, monitoring and providing monitoring reports, managing grazing and scrub). Exclusion of these lands will not increase the likelihood that some other activity would be proposed that would appreciably diminish the value of the habitat for the conservation of the species. In addition, we believe that critical habitat designation provides little gain in the way of increased public recognition for special habitat values on lands that are expressly managed to protect and enhance those values and would deter other local conservation efforts for the Alameda whipsnake in the Unit. We do not believe that this exclusion would result in the extinction of the subspecies because the MMP and dedication of conservation lands to EBRPD will preserve about 1,197 ac (484 ha) of habitat, enhance or augment rock outcrops, enhance grasslands and scrublands through grazing, thinning, or prescribed burns, and provide for regular monitoring and reporting.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

After publication of the proposed critical habitat designation, we announced the availability of an economic analysis that estimated the potential economic effect of the designation. The draft analysis was made available for public review and comment on May 4, 2006 (71 FR 26311). We accepted comments on the draft analysis until June 5, 2006.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the Alameda whipsnake. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation based on potential economic impacts of the regulation under consideration. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

We received comments on the draft economic analysis of the proposed designation. Following the close of the comment period, we reviewed and considered the public comments and information we received and prepared responses to those comments (*see* Responses to Comments section above) or incorporated the information or changes directly into this final rule or our final economic analysis.

The May 4, 2006, notice (71 FR 26311) provides a detailed economics section that estimates an economic impact of the proposed designation on land development of $531,775,546, or $46,912,009 annualized over 20 years. The revised impact on public projects is $524,972. The total revised cost of the proposed designation is $532,300,518. We evaluated the potential economic impact of this designation as identified in the draft analysis. Based on this evaluation, we believe that there are no disproportionate economic impacts that warrant exclusion pursuant to section 4(b)(2) of the Act at this time.

A copy of the economic analysis with supporting documents is available and may be obtained by contacting U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. On the basis of the final economic analysis, we have determined that the potential economic impacts of this designation is approximately $532,300,518. As such, this designation will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2). We evaluated the potential economic impact of this designation as identified in the draft analysis. Based on this evaluation, we believe that there are no disproportionate economic impacts that warrant exclusion pursuant to section 4(b)(2) of the Act at this time.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We applied the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the Alameda whipsnake. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

The designation of critical habitat is not expected to result in significant small business impacts since revenue losses would be less than 1 percent of total small business revenues in affected areas. The impacts on small business, small governments, and small nonprofits are expected to be negligible. The annual number of affected small

firms is less than one for all four counties examined. Consequently, less than one small firm is projected to have annual revenue losses equal to their expected annual revenues as a consequence of critical habitat designation.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding a project's impact on the Alameda whipsnake and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the subspecies and the threats it faces, as described in the final listing rule (62 FR 64306) and this critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(4) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(5) Activities funded by the EPA, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect Alameda whipsnakes. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing non-native species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule (62 FR 64306) and proposed critical habitat designation (70 FR 60607). These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include U.S. Army Corps of Engineers permits, permits we may issue under section 10(a)(1)(B) of the Act, FHA funding for road improvements, hydropower licenses issued by FERC, and activities performed by the Department of Energy. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination (*see* **ADDRESSES** section for information on obtaining a copy of the final economic analysis).

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. On the basis of the information obtained during the development of the economic analysis and public comment periods for this rulemaking, we have determined that this final rule to designate critical habitat for the Alameda whipsnake is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that

''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, or permits or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Alameda whipsnake may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the subspecies are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than local governments waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Alameda whipsnake.

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

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation of the subspecies, nor are there any unoccupied Tribal lands that are essential for the conservation of the Alameda whipsnake. Therefore, critical habitat for the Alameda whipsnake has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

Author(s)

The primary authors of this notice are staff from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.95(c), revise the entry for ''Alameda Whipsnake (*Masticophis lateralis euryxanthus*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) *Reptiles.*

* * * * *

Alameda Whipsnake (*Masticophis lateralis euryxanthus*)

(1) Critical habitat units are depicted for Alameda, Contra Costa, San Joaquin, and Santa Clara counties, California, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for the Alameda whipsnake (*Masticophis lateralis euryxanthus*) are the habitat components that provide:

(i) *Scrub/shrub communities with a mosaic of open and closed canopy:* Scrub/shrub vegetation dominated by low- to medium-stature woody shrubs with a mosaic of open and closed canopy, as characterized by the chamise, chamise-eastwood manzanita, chaparral whitethorn, and interior live oak shrub vegetation series occurring at elevations from sea level to approximately 3,850 feet (1,170 meters). Such scrub/shrub vegetation within these series form a pattern of open and closed canopy used by the Alameda whipsnake for shelter from predators; temperature regulation, because it provides sunny and shady locations; prey-viewing opportunities; and nesting habitat and substrate. These features contribute to support a prey base consisting of western fence lizards and other prey species such as skinks, frogs, snakes, and birds.

(ii) *Woodland or annual grassland plant communities contiguous to lands containing PCE 1:* Woodland or annual grassland vegetation series comprised of one or more of the following: Blue oak, coast live oak, California bay, California buckeye, and California annual grassland vegetation series. This mosaic of vegetation supports a prey base consisting of western fence lizards and other prey species such as skinks, frogs, snakes, and birds, and provides opportunities for: Foraging, by allowing snakes to come in contact with and visualize, track, and capture prey (especially western fence lizards, along with other prey such as skinks, frogs, birds); short and long distance dispersal within, between, or adjacent to areas containing essential features (*i.e.*, PCE 1 or PCE 3); and contact with other Alameda whipsnakes for mating and reproduction.

(iii) *Lands containing rock outcrops, talus, and small mammal burrows.* These areas are used for retreats (shelter), hibernacula, foraging, and dispersal, and provide additional prey population support functions.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

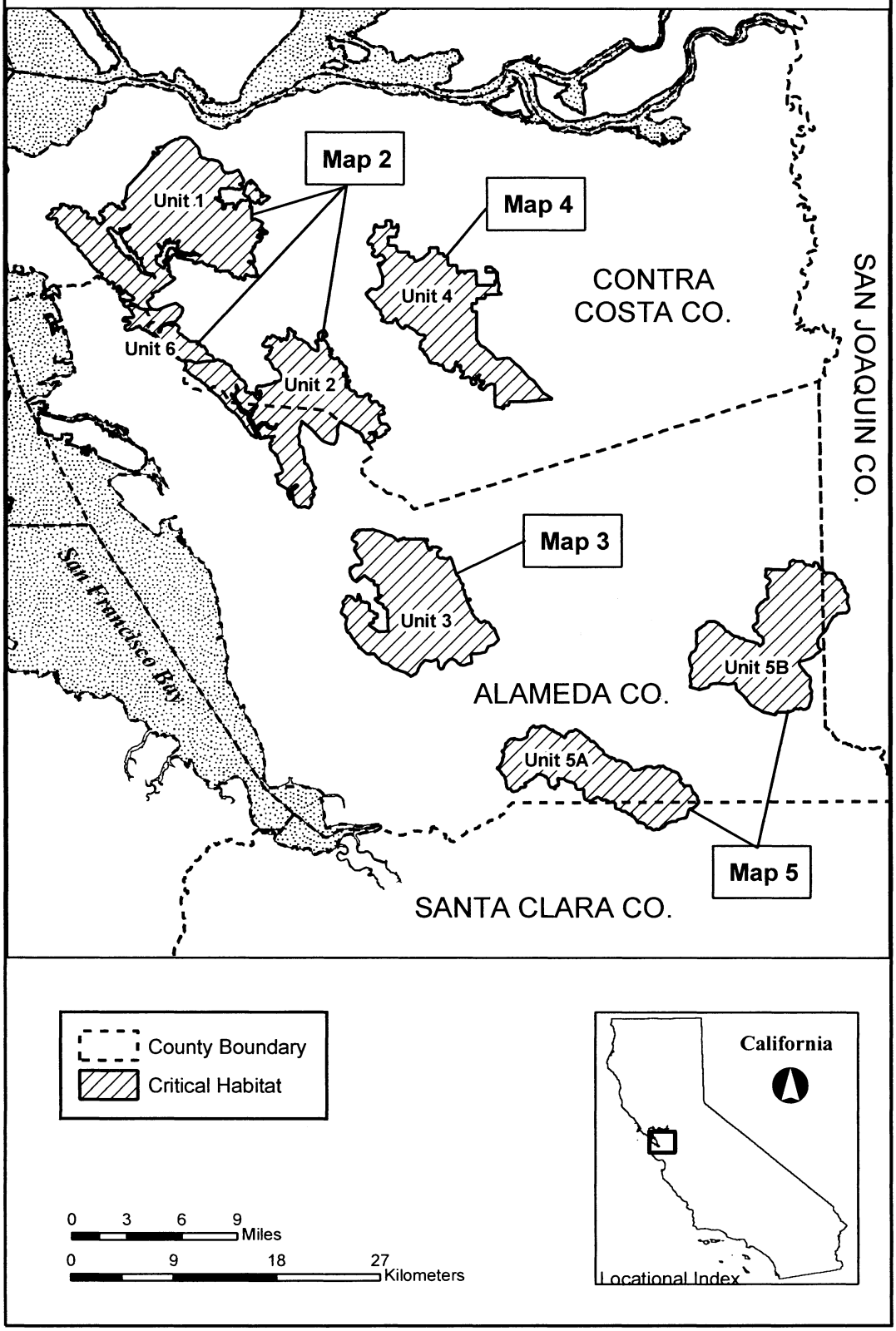
Critical Habitat Unit Maps

(4) GIS data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Note: Index map (Map 1) follows:

BILLING CODE 4310–55–P

Map 1. Alameda Whipsnake Critical Habitat Index



BILLING CODE 4310–55–C

(6) Unit 1: Tilden-Briones Unit, Alameda and Contra Costa Counties, California.

(i) From USGS 1:24,000 scale quadrangles Benecia, Richmond, Briones Valley, Walnut Creek. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 559589, 4200848; 559600, 4200866; 559610, 4200873; 559622, 4200883; 559668, 4200910; 559710, 4200940; 559715, 4200943; 559727, 4200952; 559753, 4200969; 559781, 4200994; 559806, 4201021; 559817, 4201037; 559840, 4201073; 559850, 4201093; 559874, 4201113; 559878, 4201115; 559895, 4201123; 559909, 4201130; 559929, 4201135; 559955, 4201148; 560009, 4201170; 560047, 4201192; 560059, 4201212; 560058, 4201230; 560055, 4201250; 560049, 4201289; 560047, 4201306; 560041, 4201332; 560035, 4201363; 560029, 4201381; 560024, 4201403; 560018, 4201432; 560016, 4201456; 560009, 4201486; 560008, 4201508; 560027, 4201518; 560061, 4201509; 560277, 4201575; 560304, 4201584; 560308, 4201587; 560316, 4201583; 560411, 4201602; 560673, 4201602; 560694, 4201602; 560784, 4201604; 560794, 4201635; 560795, 4201674; 560794, 4201701; 560795, 4201737; 560793, 4201770; 560784, 4201808; 560789, 4201847; 560781, 4201888; 560778, 4201912; 560787, 4201944; 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(ii) Note: Map of Unit 1 is provided in paragraph (c)(7)(ii) of this section.

(7) Unit 2: Oakland-Las Trampas, Alameda and Contra Costa Counties, California.

(i) From USGS 1:24,000 scale quadrangles Oakland East, Las Trampas Ridge, Diablo, and Hayward. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 571706, 4187420; 571707, 4187421; 571716, 4187451; 571727, 4187468; 571744, 4187490; 571756, 4187508; 571757, 4187509; 571759, 4187532; 571763, 4187571; 571791, 4187646; 571825, 4187732; 571832, 4187744; 571768, 4187924; 571751, 4187967; 571760, 4187990; 571768, 4188011; 571781, 4188026; 571784, 4188027; 571801, 4188031; 571833, 4188037; 571847, 4188046; 571858, 4188064; 571875, 4188082; 571889, 4188088; 571893, 4188091; 571896, 4188095; 571896, 4188099; 571894, 4188105; 571889, 4188115; 571883, 4188127; 571882, 4188131; 571881, 4188133; 571874, 4188139; 571867, 4188142; 571869, 4188144; 571870, 4188147; 571873, 4188153; 571877, 4188157; 571881, 4188161; 571886, 4188165; 571886, 4188165; 571887, 4188165; 571887, 4188166; 571888, 4188166; 571970, 4188166; 572045, 4188160; 572146, 4188147; 572259, 4188110; 572340, 4188072; 572447, 4188022; 572560, 4187984; 572686, 4187965; 572824, 4187978; 572943, 4188003; 573050, 4188034; 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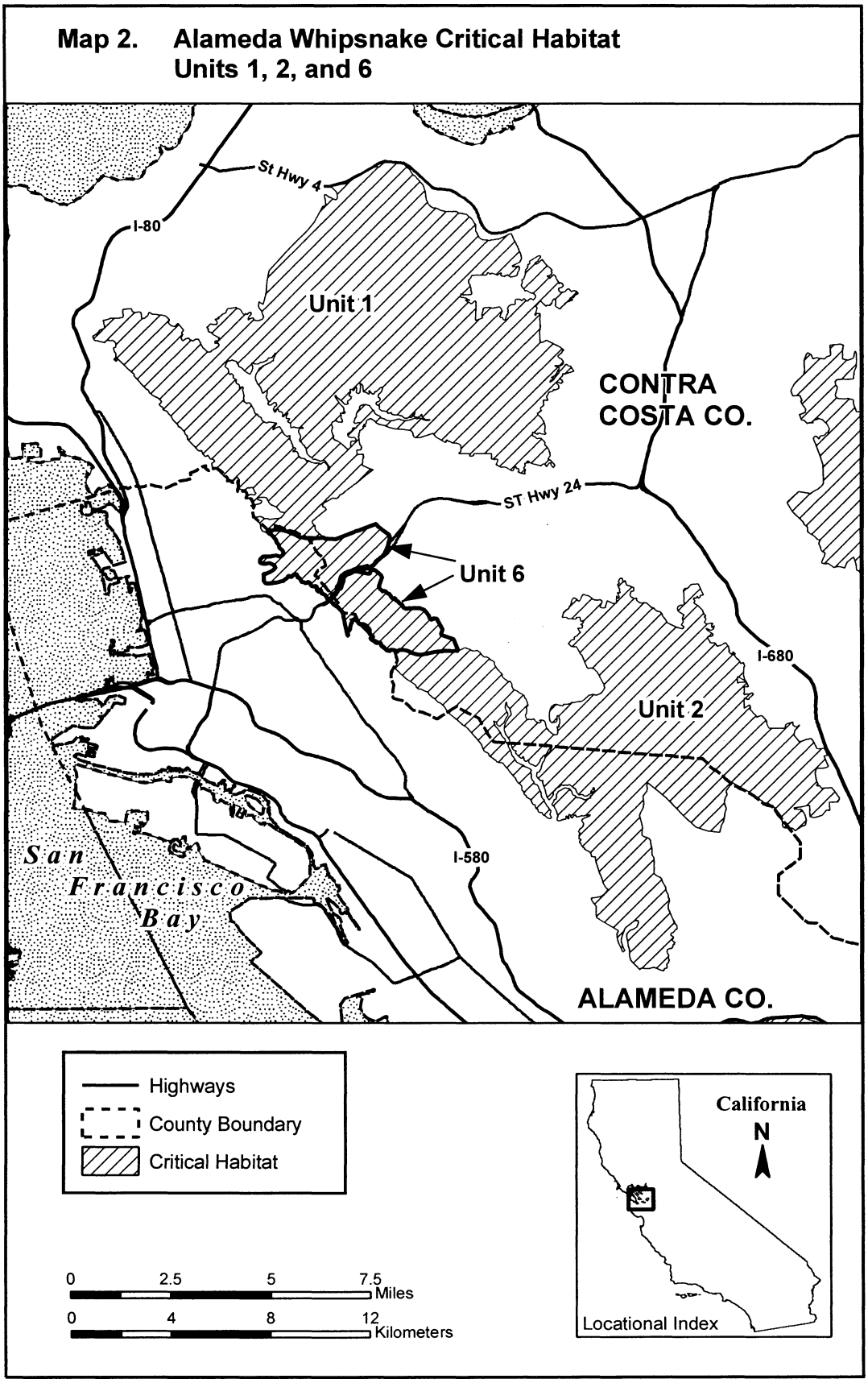
(ii) Note: Map of Unit 2 (Unit 1, Unit 2, and Unit 6 (Map 2) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(8) Unit 3: Hayward-Pleasanton Ridge, Alameda County, California.

(i) From USGS 1:24,000 scale quadrangles Hayward, Newark, Dublin,

and Niles. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 585269, 4165999; 585371, 4166270; 585519, 4166567; 585450, 4166770; 585431, 4166955; 585623, 4167122; 585713, 4167237; 585733, 4167344; 585763, 4167406; 585800, 4167440; 585819, 4167443; 585875, 4167470; 585920, 4167470; 585930, 4167470; 585952, 4167464; 585987, 4167462; 586262, 4167359; 586524, 4167014; 586710, 4167050; 586725, 4167112; 586738, 4167184; 586741, 4167200; 586738, 4167237; 586744, 4167250; 586759, 4167275; 586746, 4167307; 586733, 4167314; 586730, 4167349; 586719, 4167443; 586755, 4167465; 586782, 4167533; 586796, 4167652; 586895, 4167475; 586894, 4167475; 586924, 4167422; 586941, 4167422; 586973, 4167053; 587028, 4167054; 587029, 4167040; 587030, 4167024; 587030, 4167024; 587030, 4167024; 587032, 4166970; 587059, 4166943; 587086, 4166942; 587106, 4166933; 587159, 4166923; 587177, 4166933; 587191, 4166944; 587201, 4166952; 587214, 4166964; 587245, 4166945; 587312, 4166906; 587326, 4166909; 587355, 4166915; 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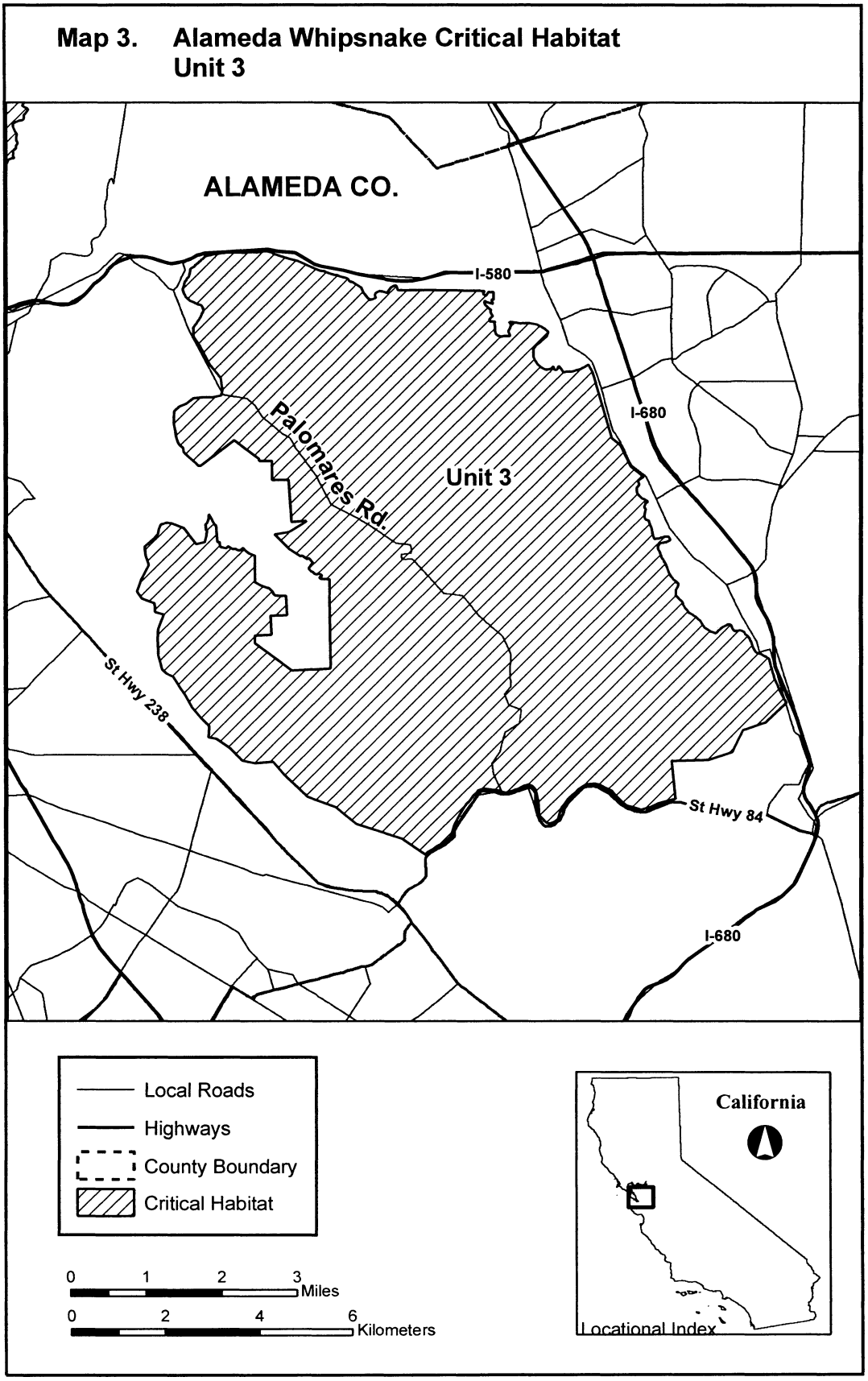
(ii) Note: Map of Unit 3 (Map 3) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(9) Unit 4: Mount Diablo-Black Hills, Contra Costa County, California.

(i) From USGS 1:24,000 scale quadrangles Diablo, Tassajara, Walnut

Creek, Clayton. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 587469, 4194136; 587939, 4194568; 588429, 4194484; 588517, 4194568; 588718, 4194677; 588869, 4194828; 588894, 4194853; 588913, 4194953; 588927, 4195024; 588899, 4195658; 588832, 4195885; 588601, 4196521; 588591, 4196523; 588592, 4196524; 588541, 4196661; 588513, 4196736; 588530, 4196754; 588603, 4196809; 588653, 4196812; 588711, 4196735; 588752, 4196709; 588774, 4196773; 588822, 4196829; 588817, 4196858; 588874, 4196856; 588923, 4196851; 588978, 4196874; 589014, 4196931; 589062, 4196960; 589090, 4196976; 589125, 4197042; 589163, 4197117; 589092, 4197248; 589049, 4197337; 588951, 4197415; 588878, 4197515; 588807, 4197513; 588719, 4197544; 588683, 4197488; 588634, 4197493; 588606, 4197473; 588481, 4197436; 588514, 4197345; 588387, 4197362; 588264, 4197341; 588239, 4197371; 588153, 4197461; 588048, 4197462; 587967, 4197688; 587998, 4197701; 588197, 4197775; 588208, 4197815; 588219, 4197874; 588215, 4197923; 588179, 4197993; 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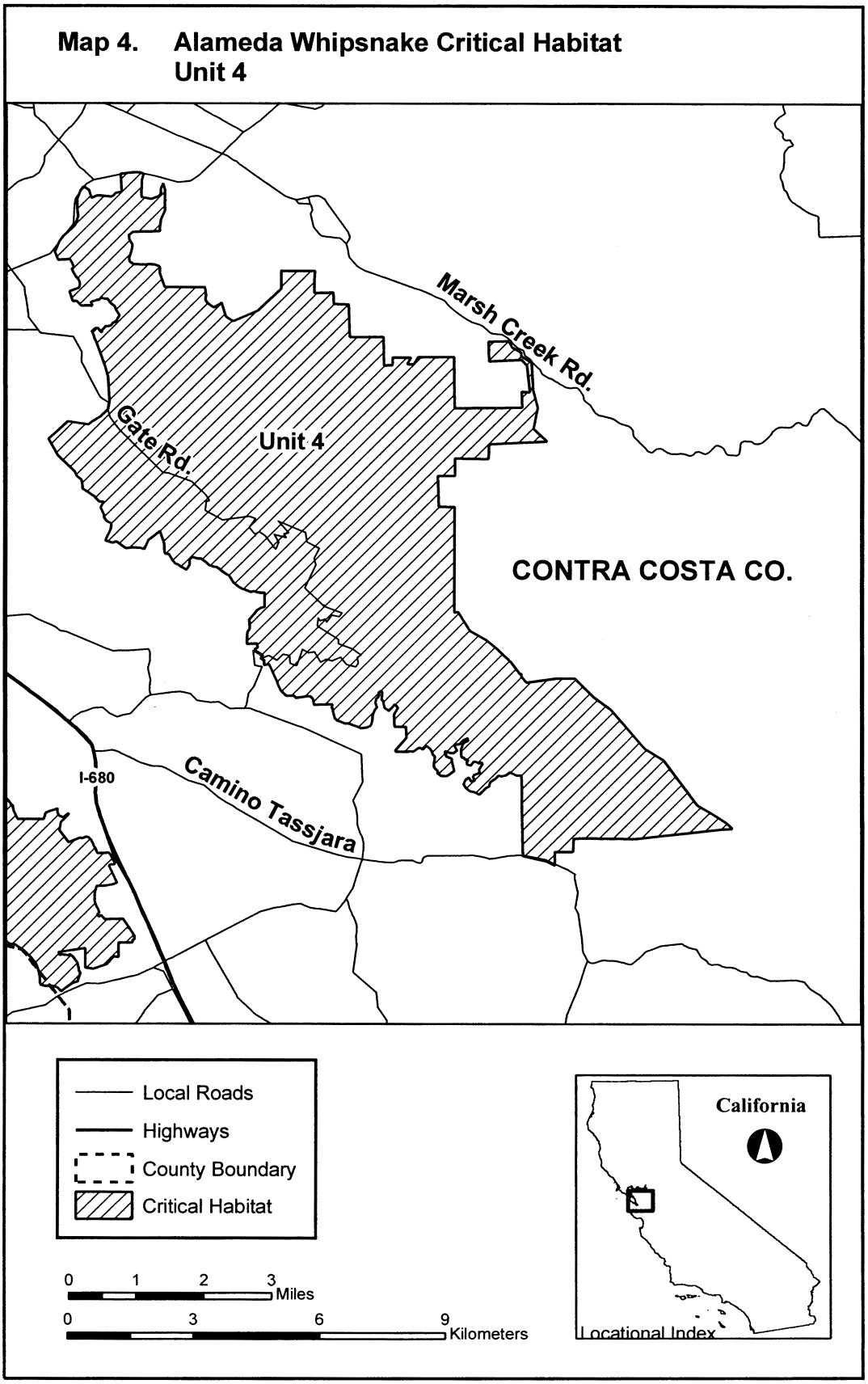
(ii) Note: Map of Unit 4 (Map 4) follows:

BILLING CODE 4310✱55–P



BILLING CODE 4310–55–C

(10) Unit 5A: Cedar Mountain, Alameda and San Joaquin Counties, California.

(i) From USGS 1:24,000 scale quadrangles Altamont, Midway, Mendenhall Springs, and Cedar Mtn. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 624962, 4170579; 625090, 4170515; 625154, 4170515; 625282, 4170515; 625474, 4170515; 625645, 4170558; 625731, 4170366; 625837, 4170216; 626179, 4170216; 626478, 4170066; 626585, 4170066; 626607, 4170195; 626586, 4170399; 626612, 4170390; 626615, 4170402; 626626, 4170412; 626629, 4170422; 626647, 4170434; 626684, 4170436; 626707, 4170437; 626747, 4170425; 626770, 4170407; 626790, 4170391; 626813, 4170378; 626916, 4170347; 626952, 4170323; 626958, 4170301; 626972, 4170253; 626979, 4170229; 626989, 4170208; 627014, 4170156; 627029, 4170132; 627056, 4170089; 627067, 4170049; 627082, 4170002; 627104, 4169947; 627139, 4169865; 627167, 4169809; 627195, 4169785; 627228, 4169767; 627251, 4169785; 627304, 4169793; 627382, 4169802; 627397, 4169763; 627414, 4169719; 627433, 4169669; 627458, 4169619; 627478, 4169587; 627515, 4169552; 627558, 4169537; 627589, 4169507; 627605, 4169498; 627635, 4169480; 627660, 4169479; 627680, 4169489; 627710, 4169497; 627746, 4169507; 627774, 4169519; 627799, 4169530; 627821, 4169526; 627879, 4169517; 627925, 4169510; 627973, 4169509; 628048, 4169503; 628109, 4169500; 628174, 4169480; 628209, 4169464; 628262, 4169442; 628292, 4169436; 628335, 4169426; 628368, 4169417; 628404, 4169394; 628430, 4169357; 628450, 4169311; 628467, 4169264; 628487, 4169239; 628505, 4169216; 628508, 4169199; 628522, 4169179; 628555, 4169134; 628575, 4169119; 628598, 4169094; 628639, 4169047; 628666, 4169011; 628750, 4168928; 628805, 4168875; 628842, 4168896; 628863, 4168894; 628886, 4168893; 628938, 4168875; 628971, 4168851; 629006, 4168810; 629023, 4168784; 629021, 4168755; 629020, 4168729; 629029, 4168691; 629039, 4168653; 629035, 4168625; 629041, 4168604; 629049, 4168574; 629076, 4168531; 629098, 4168485; 629141, 4168434; 629182, 4168396; 629196, 4168394; 629218, 4168381; 629270, 4168352; 629286, 4168227; 629286, 4168009; 629326, 4167870; 629564, 4167612; 629544, 4167413; 629524, 4167116; 629504, 4166838; 629643, 4166600; 629683, 4166342; 629584, 4166104; 629385, 4165985; 629167, 4166005; 628671, 4165925; 628532, 4165786; 628314, 4165628; 628155, 4165370; 627897, 4165012; 627738, 4164655; 627599, 4164358; 627183, 4164020; 626925, 4163643; 626925, 4163246; 627024, 4162929; 627202, 4162770; 627163, 4162631; 626845, 4162393; 626627, 4162175; 626250, 4161996; 625774, 4161798; 625416, 4161758; 625297, 4161540; 625357, 4161341; 625615, 4161063; 625952, 4160647; 626270, 4160389; 626309, 4160091; 626250, 4159575; 626270, 4159377; 626409, 4159139; 626349, 4158781; 626369, 4158385; 626239, 4157942; 626171, 4157710; 625893, 4157511; 625674, 4157492; 625436, 4157630; 625278, 4157531; 624901, 4157571; 624762, 4157412; 624524, 4157313; 624206, 4157293; 623809, 4157293; 623373, 4157273; 623369, 4157265; 623273, 4157015; 622122, 4157293; 621011, 4157928; 620436, 4158722; 619801, 4159258; 619761, 4159774; 619543, 4159754; 619166, 4159694; 618888, 4159734; 618531, 4159774; 618293, 4159833; 617896, 4159774; 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621832, 4163004; 622206, 4163294; 622206, 4163465; 622206, 4163572; 622248, 4163679; 622013, 4163935; 621928, 4163956; 621800, 4163999; 621736, 4164085; 621714, 4164277; 621565, 4164341; 621415, 4164384; 621372, 4164576; 621330, 4164640; 621266, 4164726; 621266, 4164832; 621415, 4164961; 621522, 4165046; 621650, 4165131; 621714, 4165238; 621693, 4165345; 621672, 4165473; 621714, 4165580; 621693, 4165815; 621607, 4165965; 621586, 4166071; 621565, 4166232; 621565, 4166285; 621650, 4166520; 621821, 4166712; 622013, 4166926; 622099, 4166947; 622334, 4167140; 622547, 4167204; 622633, 4167289; 622590, 4167396; 622526, 4167588; 622526, 4167866; 622526, 4167994; 622483, 4168144; 622462, 4168315; 622676, 4168528; 622782, 4168742; 622782, 4168891; 622654, 4169020; 622505, 4169126; 622355, 4169126; 622377, 4169233; 622419, 4169426; 622419, 4169596; 622419, 4169767; 622312, 4169810; 624150, 4169789; 624342, 4169874; 624492, 4170024; 624492, 4170152; 624492, 4170323; 624534, 4170494; 624705, 4170601; 624833, 4170643; returning to 624962, 4170579.

(ii) Note: Map of Unit 5A is provided in paragraph (11)(ii) of this section.

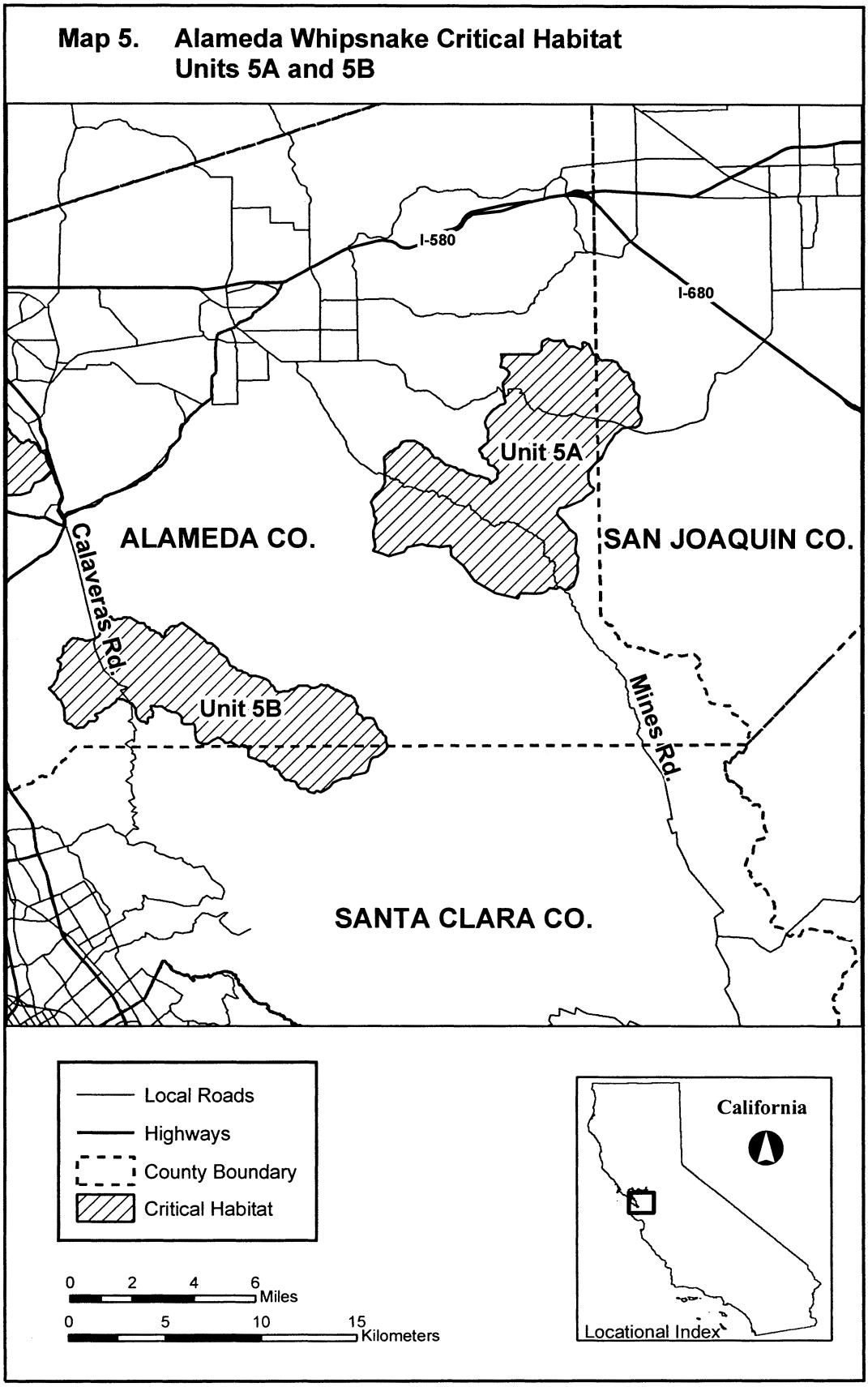
(11) Unit 5B; Alameda County and Santa Clara County, California.

(i) From USGS 1:24,000 scale quadrangles Niles, La Costa Valley, Mendenhall Springs, Calaveras Reservoir, Mt. Day. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 602197, 4155953; 602394, 4155892; 602698, 4155953; 602747, 4156027; 603122, 4156019; 603577, 4155710; 603854, 4155726; 603919, 4155564; 604114, 4155499; 604130, 4155353; 604634, 4155174; 604797, 4154979; 605138, 4155483; 605561, 4155580; 605805, 4155743; 606943, 4154914; 607089, 4154702; 607349, 4154670; 607658, 4154410; 607772, 4154166; 608146, 4153922; 608309, 4153499; 608585, 4153402; 608666, 4153255; 608926, 4153255; 609203, 4153125; 609284, 4152979; 609609, 4152995; 610195, 4152816; 610634, 4152394; 610699, 4152198; 611398, 4152198; 611983, 4152475; 612373, 4152475; 612650, 4152361; 613056, 4152540; 613446, 4152524; 613593, 4152361; 614487, 4151955; 614617, 4151961; 614780, 4151820; 614962, 4151397; 614905, 4151070; 615116, 4150964; 615241, 4150715; 615366, 4150801; 615750, 4150782; 616019, 4150206; 616192, 4150109; 616413, 4149812; 616499, 4149254; 616134, 4148909; 615641, 4148634; 615372, 4147941; 614624, 4147768; 614579, 4147670; 614189, 4147648; 613874, 4147530; 613683, 4147420; 613492, 4147170; 613184, 4147002; 613007, 4146920; 612824, 4147011; 612733, 4146904; 612627, 4146904; 612475, 4146920; 612323, 4147102; 611959, 4147102; 611701, 4147481; 611337, 4147588; 611185, 4147542; 610866, 4148043; 610638, 4148134; 610699, 4148241; 610623, 4148301; 610365, 4148286; 610365, 4148362; 610092, 4148575; 609849, 4148575; 609257, 4148800; 609257, 4149227;

609090, 4149379; 608771, 4149288; 608391, 4149531; 608057, 4149516; 607693, 4149789; 607161, 4149470; 606645, 4149546; 606478, 4149956; 606463, 4150457; 606387, 4150518; 605901, 4150472; 605795, 4150563; 605750, 4150913; 605628, 4151034; 605036, 4151186; 604763, 4151398; 604186, 4151429; 604292, 4151095; 604277, 4150821; 604034, 4150791; 603973, 4150472; 603867, 4150609; 603533, 4150746; 603396, 4151262; 603199, 4151565; 603108, 4151550; 603047, 4151656; 602759, 4151778; 602425, 4151793; 602377, 4151646; 602030, 4151353; 601817, 4151292; 601301, 4150943; 601438, 4150852; 601377, 4150670; 600982, 4150624; 600724, 4150320; 600239, 4150290; 600087, 4150487; 599829, 4150548; 599737, 4150700; 599707, 4151292; 599586, 4151626; 598902, 4152355; 599039, 4152385; 599191, 4152552; 599510, 4153372; 599540, 4153645; 599358, 4153827; 599555, 4153949; 599662, 4154161; 599677, 4154526; 599798, 4154541; 600056, 4154860; 600421, 4154936; 600922, 4154799; 601392, 4154966; 601514, 4155042; 601575, 4155179; 601544, 4155437; 601711, 4155558; 601833, 4155877; 602106, 4156074; returning to 602197, 4155953.

(ii) Note: Map of Unit 5A and Unit 5B (Map 5) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(12) Unit 6: Caldecott Tunnel, Alameda and Contra Costa Counties, California.

(i) From USGS 1:24,000 scale quadrangles Briones Valley, and Oakland East. Land bounded by the following UTM Zone 10, NAD83 coordinates (E, N): 566273, 4191731; 566273, 4191775; 566276, 4191777; 566275, 4191780; 566294, 4191824; 566332, 4191876; 566329, 4191875; 566330, 4191877; 566390, 4191931; 566415, 4191935; 566458, 4191942; 566525, 4191942; 566600, 4191940; 566669, 4191935; 566750, 4191950; 566752, 4191952; 566839, 4191957; 566944, 4191974; 567064, 4191950; 567124, 4191941; 567186, 4191988; 567240, 4192047; 567227, 4192102; 567203, 4192172; 567156, 4192217; 567079, 4192271; 567066, 4192295; 567040, 4192363; 567037, 4192422; 567001, 4192463; 566959, 4192511; 566950, 4192542; 566937, 4192585; 566909, 4192628; 566891, 4192658; 566845, 4192729; 566798, 4192772; 566741, 4192832; 566727, 4192843; 566723, 4192842; 566687, 4192855; 566647, 4192882; 566625, 4192904; 566624, 4192905; 566624, 4192906; 566627, 4192907; 566650, 4192915; 566650, 4192915; 566776, 4192988; 566895, 4193034; 567014, 4193041; 567193, 4193015; 567365, 4192955; 567470, 4192915; 567596, 4192862; 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(ii) Note: Map of Unit 6 provided in paragraph (7)(ii) of this section.

* * * * *

Dated: September 22, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–8367 Filed 9–29–06; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Monday,
October 2, 2006

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2006–07 Late Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AU42

Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2006–07 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 23, 2006.

ADDRESSES: You may inspect comments on the special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1967).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In a proposed rule published in the August 17, 2006, **Federal Register** (71 FR 47461), we proposed special migratory bird hunting regulations for the 2006–07 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In a proposed rule published in the April 11, 2006, **Federal Register** (71 FR 18562), we requested that tribes desiring special hunting regulations in the 2006–07 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) steps that would be taken to limit the level of harvest, where it could be shown that failure to limit the harvest would adversely impact the migratory bird resource; and

(d) tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the August 17 proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were addressed in a final rule published in the September 20, 2006, **Federal Register** (71 FR 55076). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about September 24 or later each year and have a primary emphasis on waterfowl.

Status of Populations

In the August 17 proposed rule and September 20 final rule, we reviewed the status for various populations for which seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey, population status reports for blue-winged teal, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons, and the status and harvest of waterfowl. The tribal seasons established below are commensurate with the population status.

Comments and Issues Concerning Tribal Proposals

For the 2006–07 migratory bird hunting season, we proposed regulations for 28 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 17 tribes have proposals with late seasons. Proposals are addressed in the following section. The comment period for the proposed rule, published on August 17, 2006, closed on August 28, 2006. We received 24 comments regarding the notice of intent published on April 11, 2006, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members, and the August 17 proposed rule. All of these comments, except for the comment discussed below, were addressed in the September 20 final rule.

The Klamath Tribes offered several comments on the August 17 proposed rule. They stated that steel shot was not required by Klamath tribal members and that the information concerning the percentage of locally produced Canada geese in their harvest was no longer valid.

Service Response: For the record, Klamath Tribal proposals from 2003 through 2006 requested regulations ''the same as last year,'' resulting in the proposal we published in August. Beginning in 1991, nontoxic shot was required by all migratory bird hunters for hunting waterfowl and coots in the contiguous United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands, and the territorial waters of the United States because of the toxic effects of lead on birds when ingested. These

restrictions are contained in 50 CFR 20.21(j). These regulations apply to all waterfowl hunters. There are currently no exceptions for any State or Tribe. We can foresee no circumstances where such an exception would be contemplated or approved. We further note that a preliminary review of Klamath Tribal proposals from 2000 through 2002 all specifically required the use of steel shot by tribal hunters. Thus, we cannot approve the Klamath's requested exception for the use of nontoxic shot for waterfowl and coot hunting.

Regarding the information concerning the percentage of locally-produced Canada geese in the harvest, we defer to the Klamath Tribes for the latest information and data on this issue. We further note that this item was included in the August 17 proposed rule for largely informational purposes, rather than as a basis for any decision affecting tribal regulations.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Annual NEPA considerations are covered under a separate Environmental Assessment (EA), ''Duck Hunting Regulations for 2006–07,'' and an August 24, 2006, Finding of No Significant Impact (FONSI). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' was prepared. Copies of the EAs and FONSI are available upon request from the address indicated under **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, and were detailed in a March 9, 2006, **Federal Register** notice (71 FR 12216).

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat.

Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBM, at the address indicated under **ADDRESSES**.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost-benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990 through 1996, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected economic benefit of the annual migratory bird hunting frameworks is on the order of $734 million to $1.064 billion, with a mid-point estimate of $899 million. Copies of the cost-benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under *Executive Order 12866.* This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons given above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Surveys and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 11/30/2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2

U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduces restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals considered in this rulemaking, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

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

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Public Law 106–108.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.110 is amended by revising paragraphs (a), (b), (c), (g), (k), (m), (o), (q), (r), (s), and (u) and by adding paragraphs (v) through (aa) to read as set forth below. (Current § 20.110 was published at 71 FR 55076, September 20, 2006.)

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters)

Doves

Season Dates: Open September 1, through September 15, 2006; then open November 11, through December 25, 2006.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or white-winged doves in the aggregate. For the late season, the daily bag limit is 10 mourning doves.

Possession limits are twice the daily bag limits.

Ducks (Including Mergansers)

Season Dates: Open October 14, 2006, through January 28, 2007.

Daily Bag and Possession Limits: Seven ducks, including two hen mallards, two redheads, two Mexican ducks, two goldeneye, two cinnamon teal, and three scaup. The seasons on canvasback and pintail are closed. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate.

Geese

Season Dates: Open October 21, 2006, through January 28, 2007.

Daily Bag and Possession Limits: Three geese, including no more than three dark (Canada) geese and three white (snow, blue, Ross's) geese. The possession limit is six dark geese and six white geese.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters)

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 1, 2006, through March 9, 2007.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Nontribal Hunters

Ducks (Including Mergansers)

Season Dates: Open September 30, 2006, through January 12, 2007.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, three scaup, and two redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: The daily bag and possession limit is 25.

Geese

Dark Geese

Season Dates: Open September 30, 2006, through January 12, 2007.

Daily Bag and Possession Limits: Four and eight geese, respectively.

Light Geese

Season Dates: Open September 30, 2006, through January 12, 2007.

Daily Bag and Possession Limits: Three and six geese, respectively.

Youth Waterfowl Hunt

Season Dates: September 23–24, 2006.

Daily Bag and Possession Limits: Same as ducks.

General Conditions: Tribal members and Nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

Sandhill Cranes

Season Dates: Open September 10, through October 16, 2006.

Daily Bag Limit: Three sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in his or her possession while hunting.

Doves

Season Dates: Open September 1, through October 30, 2006.

Daily Bag Limit: 15 mourning doves.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in his or her possession while hunting.

Ducks

Canvasback: Open October 1, through November 8, 2006.

Other ducks: Open October 1, through December 12, 2006.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (including no more than two female mallards), two redheads, one pintail, one canvasback (when open), three scaup, and two wood ducks. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Five mergansers, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 15, 2006, through January 17, 2007.

Daily Bag and Possession Limits: Three and six, respectively.

White-Fronted Geese

Season Dates: Open September 24, through December 18, 2006.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open September 24, through December 29, 2006.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

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(g) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

Nontribal Hunters on Reservation

Ducks

Season Dates: Open September 23, 2006, through January 31, 2007. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays, and for a continuous period in the months of October and November, not to exceed 107 days total. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: seven ducks, including no more than two female mallards, one pintail, three scaup, one canvasback, and two redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, through September 17, 2006, for the early-season, and open October 1, 2006, through January 31, 2007, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 and 10, respectively, for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2006, through January 31, 2007.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2006, through January 31, 2007.

Daily Bag Limit: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit. Hunters must observe all State and Federal regulations, such as those contained in 50 CFR part 20.

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(k) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Mergansers and Coots)

Season Dates: Open September 30, 2006, through March 10, 2007.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (only one of which may be a hen), three scaup, one mottled duck, two redheads, two wood ducks, one canvasback, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 14, 2006, through March 10, 2007.

Daily Bag and Possession Limits: Three and six, respectively.

White-fronted Geese

Season Dates: Open October 7, 2006, through March 10, 2007.

Daily Bag and Possession Limits: Two and four, respectively.

Light Geese

Season Dates: Open October 14, 2006, through March 10, 2007.

Daily Bag and Possession Limits: 20 and 40, respectively.

Youth Waterfowl Hunt

Season Dates: Open September 23, through September 24, 2006.

Daily Bag and Possession Limits: Same as above.

Nontribal Hunters

Ducks (Including Mergansers and Coots)

Season Dates: Open October 14, 2006, through January 14, 2007.

Daily Bag and Possession Limits: Five ducks, including no more than five mallards (only one of which may be a hen), two scaup, one mottled duck, one canvasback, two redheads, two wood ducks, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 28, 2006, through February 9, 2007.

Daily Bag and Possession Limits: Three and six, respectively.

White-Fronted Geese

Season Dates: Open October 7, 2006, through December 29, 2006.

Daily Bag and Possession Limits: One and two, respectively.

Light Geese

Season Dates: Open October 14, 2006, through January 14, 2007, and open February 25, through March 10, 2007.

Daily Bag and Possession Limits: 20 and 40, respectively.

Youth Waterfowl Hunt

Season Dates: Open September 23, through September 24, 2006.

Daily Bag and Possession Limits: Same as above.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

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(m) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

Band-Tailed Pigeons

Season Dates: Open September 1, through September 30, 2006.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, through September 30, 2006.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers)

Season Dates: Open September 23, 2006, through January 7, 2007.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, three scaup, and two redheads. The possession limit is twice the daily bag limit.

Coots and Common Moorhens

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and moorhens, singly or in the aggregate. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 23, 2006, through January 7, 2007.

Daily Bag and Possession Limits: Four and eight geese, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Navajo Nation also apply on the reservation.

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(o) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2006, through February 15, 2007.

Daily Bag and Possession Limits: Two brant. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

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(q) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2006, through February 28, 2007.

Daily Bag and Possession Limits: 7 and 14 ducks, respectively, except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 1 canvasback, 3 scaup, and 2 redheads.

Geese

Season Dates: Open September 15, 2006, through February 28, 2007.

Daily Bag and Possession Limits: 7 and 14 geese, respectively; except that the bag limits may not include more than 2 brant and 2 cackling Canada goose. For those tribal members who engage in subsistence hunting, the Tribes set a maximum annual bag limit of 365 ducks and 365 geese.

Snipe

Season Dates: Open September 15, 2006, through February 28, 2007.

Daily Bag and Possession Limits: 8 and 16, respectively.

Nontribal Hunters

Ducks

Season Dates: Open October 14, 2006, through January 28, 2007.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, three scaup, one canvasback, and two redheads. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 and 50, respectively

Geese

Season Dates: Open October 14, 2006, through January 28, 2007.

Daily Bag and Possession Limits: Four dark geese, including no more than two cackling Canada geese, and four light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Open January 13, through January 28, 2007.

Daily Bag and Possession Limits: Two and four brant, respectively.

Snipe

Season Dates: Open November 18, 2006, through February 25, 2007.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

(r) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

Ducks

Season Dates: Open November 1, 2006, through February 8, 2007.

Daily Bag and Possession Limits: 15 and 20, respectively. The season on canvasbacks is closed.

Coots

Season Dates: Open November 1, 2006, through February 8, 2007.

Daily Bag and Possession Limits: 20 and 30, respectively.

Geese

Season Dates: Open November 1, 2006, through February 8, 2007.

Daily Bag and Possession Limits: The daily bag limits are seven geese and five brant. The possession limits for geese and brant are 10 and 7, respectively.

Mourning Dove

Season Dates: Open September 1, through December 31, 2006.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(s) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

Teal

Season Dates: Open October 16, 2006, through January 29, 2007.

Daily Bag Limit: Six teal.

Ducks

Season Dates: Open November 1, 2006, through February 28, 2007.

Daily Bag Limit: Six ducks, including no more than two hen mallards, two black ducks, two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, and one pintail. The season is closed for harlequin ducks.

Sea Ducks

Season Dates: Open October 16, 2006, through March 1, 2007.

Daily Bag Limit: Seven ducks including no more than four of any one species (only one of which may be a hen eider).

Canada Geese

Season Dates: Open September 11, through September 25, 2006, and open November 1, 2006, through February 28, 2007.

Daily Bag Limits: Five Canada geese during the first period and three during the second.

Snow Geese

Season Dates: Open September 11, through September 25, 2006, and open November 1, 2006, through February 28, 2007.

Daily Bag Limits: 15.

Woodcock

Season Dates: Open October 16, through December 1, 2006.

Daily Bag Limit: Three woodcock.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. Tribal members will observe all basic Federal migratory bird hunting regulations contained in 50 CFR.

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(u) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

Band-tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, through September 15, 2006.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, through September 15, 2006.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Ducks (Including Mergansers)

Open October 14, 2006, through January 28, 2007.

Daily Bag and Possession Limits: Seven ducks, including no more than three mallards (including no more than two hen mallard), two redheads, three scaup, one canvasback, and one pintail. The possession limit is twice the daily bag limit.

Coots, Moorhens and Gallinules

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots, moorhens, and gallinules, singly or in the aggregate. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 14, 2006, through January 28, 2007.

Bag and Possession Limits: Three and six, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, the area open to waterfowl hunting in the above seasons consists of: The entire length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2006–07 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2006–07 season.

(v) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)

Ducks (Including Mergansers)

Season Dates: Open October 7, through November 30, 2006.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, one pintail, one canvasback, two redheads, and three scaup. The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open October 8, through November 30, 2006.

Daily Bag and Possession Limits: Two and four, respectively.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(w) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

Ducks

Season Dates: Open October 1, 2006, through January 28, 2007.

Daily Bag and Possession Limits: 9 and 18 ducks, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 6 and 12 geese, respectively.

General: The Klamath Tribe provides its game management officers, biologists, and wildlife technicians with regulatory enforcement authority, and has a court system with judges that hear cases and set fines. Nontoxic shot is required. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(x) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)

Ducks

Season Dates: Open October 7, 2006, through January 19, 2007.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, three scaup, and two redheads. The possession limit is twice the daily bag limit.

Mergansers

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 7 and 14 mergansers, respectively.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open October 7, 2006, through January 19, 2007.

Daily Bag and Possession Limits: Four light geese and four dark geese. The possession limit is twice the daily bag limit.

Common Snipe

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

(y) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

Ducks (Including Mergansers)

Season Dates: Open October 1, 2006, through February 15, 2007.

Daily Bag and Possession Limits: 10 ducks, including no more than 7 mallards of which only 3 may be hen mallards, 3 pintail, 3 canvasback, 3 scaup, and 3 redheads. The possession limit is twice the daily bag limit.

Coot

Season Dates: October 1, 2006, through January 31, 2007.

Daily Bag and Possession Limits: 25 and 50, respectively.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Six and twelve, respectively.

Brant

Season Dates: October 1, 2006, through January 31, 2007.

Daily Bag and Possession Limits: 25 and 50, respectively.

Snipe

Season Dates: Open October 1, 2006, through January 31, 2007.

Daily Bag and Possession Limits: 10 and 20, respectively.

Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(z) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

Off Reservation

Ducks (Including Mergansers)

Season Dates: Open September 27, 2006, through February 25, 2007.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

On Reservation

Ducks (Including Mergansers)

Season Dates: Open September 27, 2006, through March 9, 2007.

Daily Bag and Possession Limits: 10 ducks, including no more than 5 hen mallards, 4 pintail, 7 scaup, and 5 redheads. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

Brant

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

General Conditions: Steps will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Swinomish Tribal Fish and Game.

(aa) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)

Ducks (Including Mergansers)

Open October 9, Through December 21, 2007.

Daily Bag and Possession Limits: Five ducks, including no more than five mallards (no more than two hen mallards), two redheads, one canvasback, one pintail, two scaup, and two wood ducks. The daily bag limit for mergansers is five, of which no more than one can be a hooded merganser. The possession limit is twice the daily bag limit.

Coots

Season Dates: Same as other ducks.

Daily Bag and Possession Limits: 15 and 30 coots, respectively.

Canada Geese and Brant

Season Dates: Open October 29, 2006, through February 11, 2007.

Daily Bag and Possession Limits: Three geese. The possession limit is twice the daily bag limit.

White-Fronted Geese

Season Dates: October 29, 2006, through January 22, 2007.

Daily Bag and Possession Limits: One. The possession limit is twice the daily bag limit.

Light Geese

Season Dates: Open October 29, 2006, through January 19, 2007.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions

(1) The waterfowl hunting regulations established by this final rule apply to tribal and trust lands within the external boundaries of the reservation.

(2) Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

Dated: September 25, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–16173 Filed 9–29–06; 8:45 am]

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CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 2, 2006

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Nevada; published 8-31-06

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Central Office et al.; addresses removed from rules; published 8-31-06

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New aircraft; standard airworthiness certification; published 9-1-06

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Miscellaneous changes; published 8-31-06

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Sheep and goat semen; comments due by 10-10-06; published 8-9-06 [FR E6-12934]

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Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

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S. 3525/P.L. 109–288

Child and Family Services Improvement Act of 2006 (Sept. 28, 2006; 120 Stat. 1233)

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100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–060–00106–9)	61.00	July 1, 2006
900–1899	(869–060–00107–7)	36.00	[7]July 1, 2006
1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
*200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
*191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–060–00122–1)	37.00	July 1, 2006
*700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
*1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–056–00126–6)	61.00	July 1, 2005
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
*300–End	(869–060–00133–6)	61.00	July 1, 2006
***37**	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
*63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
*86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–056–00157–6)	60.00	July 1, 2005
*100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
*700–789	(869–060–00167–1)	61.00	July 1, 2006
*790–End	(869–060–00168–9)	61.00	July 1, 2006
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
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
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	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[11] July 1, 2006
102–200	(869–056–00171–1)	56.00	July 1, 2005
201–End	(869–056–00172–0)	24.00	July 1, 2005
42 Parts:			
1–399	(869–056–00173–8)	61.00	Oct. 1, 2005
400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–056–00193–2)	46.00	Oct. 1, 2005
40–69	(869–056–00194–1)	40.00	Oct. 1, 2005
70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
80–End	(869–056–00196–7)	61.00	Oct. 1, 2005
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
1 (Parts 52–99)	(869–056–00198–3)	49.00	Oct. 1, 2005
2 (Parts 201–299)	(869–056–00199–1)	50.00	Oct. 1, 2005
3–6	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–056–00203–3)	47.00	Oct. 1, 2005
49 Parts:			
1–99	(869–056–00204–1)	60.00	Oct. 1, 2005
100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–056–00206–8)	23.00	Oct. 1, 2005
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
300–399	(869–056–00208–4)	32.00	Oct. 1, 2005
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–056–00211–4)	28.00	Oct. 1, 2005
1200–End	(869–056–00212–2)	34.00	Oct. 1, 2005
50 Parts:			
1–16	(869–056–00213–1)	11.00	Oct. 1, 2005
17.1–17.95(b)	(869–056–00214–9)	32.00	Oct. 1, 2005
17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
17.96–17.99(h)	(869–056–00215–7)	61.00	Oct. 1, 2005
17.99(i)–end and 17.100–end	(869–056–00217–3)	47.00	Oct. 1, 2005
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
600–End	(869–056–00219–0)	62.00	Oct. 1, 2005
CFR Index and Findings Aids	(869–060–00050–0)	62.00	Jan. 1, 2006
Complete 2006 CFR set		1,398.00	2006
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2006
Individual copies		4.00	2006
Complete set (one-time mailing)		325.00	2005
Complete set (one-time mailing)		325.00	2004

[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, 2006. 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, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.

[10] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[11] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 2006

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Oct 2	Oct 17	Nov 1	Nov 16	Dec 1	Jan 2
Oct 3	Oct 18	Nov 2	Nov 17	Dec 4	Jan 2
Oct 4	Oct 19	Nov 3	Nov 20	Dec 4	Jan 2
Oct 5	Oct 20	Nov 6	Nov 20	Dec 4	Jan 3
Oct 6	Oct 23	Nov 6	Nov 20	Dec 5	Jan 4
Oct 10	Oct 25	Nov 9	Nov 24	Dec 11	Jan 8
Oct 11	Oct 26	Nov 13	Nov 27	Dec 11	Jan 9
Oct 12	Oct 27	Nov 13	Nov 27	Dec 11	Jan 10
Oct 13	Oct 30	Nov 13	Nov 27	Dec 12	Jan 11
Oct 16	Oct 31	Nov 15	Nov 30	Dec 15	Jan 16
Oct 17	Nov 1	Nov 16	Dec 1	Dec 18	Jan 16
Oct 18	Nov 2	Nov 17	Dec 4	Dec 18	Jan 16
Oct 19	Nov 3	Nov 20	Dec 4	Dec 18	Jan 17
Oct 20	Nov 6	Nov 20	Dec 4	Dec 19	Jan 18
Oct 23	Nov 7	Nov 22	Dec 7	Dec 22	Jan 22
Oct 24	Nov 8	Nov 24	Dec 8	Dec 26	Jan 22
Oct 25	Nov 9	Nov 24	Dec 11	Dec 26	Jan 23
Oct 26	Nov 13	Nov 27	Dec 11	Dec 26	Jan 24
Oct 27	Nov 13	Nov 27	Dec 11	Dec 26	Jan 25
Oct 30	Nov 14	Nov 29	Dec 14	Dec 29	Jan 29
Oct 31	Nov 15	Nov 30	Dec 15	Jan 2	Jan 29