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

WHEN: Thursday, September 22, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Presidential Documents

Title 3—

The President

Memorandum of April 21, 2005

Memorandum on Assignment of Reporting Functions under the Intelligence Reform and Terrorism Prevention Act of 2004

Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Director of National Intelligence[,] the Attorney General[, and] the Secretary of Homeland Security

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

1. The reporting functions of the President under sections 4026(a)(4)(A), 4026(c)(2), 7104(e)(4)(A), 7202(d), 7204(c)(1)–(2), and 7119(a) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458, 118 Stat. 3638) (the ''Act'') are hereby assigned to the Secretary of State.

The reporting function under section 7202(d) of the Act on the Human Smuggling and Trafficking Center shall be coordinated with the Attorney General and the Secretary of Homeland Security.

Heads of departments and agencies shall, to the extent permitted by law, furnish to the Secretary of State information the Secretary requests to perform such functions, in the format and on the schedule specified by the Secretary.

2. The reporting function of the President under section 7104(i) of the Act is hereby assigned to the Secretary of Defense.

Heads of departments and agencies shall, to the extent permitted by law, furnish to the Secretary of Defense information the Secretary requests to perform such functions, in the format and on the schedule specified by the Secretary.

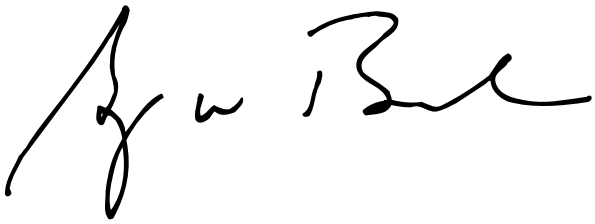
3. The reporting functions under sections 1022 and 1094 of the Act are hereby assigned to the Director of National Intelligence.

Heads of departments and agencies shall, to the extent permitted by law, furnish to the Director of National Intelligence information the Director requests to perform such functions, in the format and on the schedule specified by the Director.

The Secretaries of State and Defense, and the Director of National Intelligence shall perform such functions in a manner consistent with the President's constitutional authority to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties.

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

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



THE WHITE HOUSE,
Washington, April 21, 2005.

[FR Doc. 05–16628
Filed 8–18–05; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30454; Amdt. No. 3129]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 19, 2005. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 19, 2005.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are

impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC on August 12, 2005.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 29 September 2005*

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** * * Effective 27 October 2005*

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Charleston, SC, Charleston AFB/INTL, RADAR–1, Amdt 17
Charleston, SC, Charleston AFB/INTL, VOR/DME OR TACAN RWY 15, Amdt 14
Charleston, SC, Charleston AFB/INTL, VOR/DME OR TACAN RWY 21, Amdt 14
Charleston, SC, Charleston AFB/INTL, VOR/DME OR TACAN RWY 33, Amdt 13
Charleston, SC, Charleston AFB/INTL, Takeoff Minimums and Textual DP, Amdt 5
Chattanooga, TN, Lovell Field, RNAV (GPS) RWY 20, Orig
Chattanooga, TN, Lovell Field, RNAV (GPS) RWY 2, Orig
Chattanooga, TN, Lovell Field, RNAV (GPS) RWY 15, Orig
Chattanooga, TN, Lovell Field, RNAV (GPS) RWY 33, Orig
Chattanooga, TN, Lovell Field, ILS OR LOC RWY 2, Amdt 7
Chattanooga, TN, Lovell Field, ILS OR LOC RWY 20, Amdt 36, ILS RWY 20 (CAT II), Amdt 36
Chattanooga, TN, Lovell Field, RADAR–1, Amdt 9
Chattanooga, TN, Lovell Field, NDB RWY 20, Amdt 31
Chattanooga, TN, Lovell Field, VOR RWY 33, Amdt 17
Chattanooga, TN, Lovell Field, Takeoff Minimums and Textual DP, Amdt 10
Springfield, TN, Springfield Robertson County, RNAV (GPS) RWY 4, Orig
Springfield, TN, Springfield Robertson County, RNAV (GPS) RWY 22, Orig
Springfield, TN, Springfield Robertson County, LOC RWY 4, Amdt 1
Springfield, TN, Springfield Robertson County, NDB RWY 4, Amdt 1
Springfield, TN, Springfield Robertson County, NDB OR GPS RWY 22, Amdt 4, CANCELLED
Springfield, TN, Springfield Robertson County, Takeoff Minimums and Textual DP, Orig
Logan UT, Logan-Cache, VOR OR GPS-A, Amdt 6C, CANCELLED
Ogden, UT, Ogden-Hinckley, ILS OR LOC RWY 3, Amdt 4
Ogden, UT, Ogden-Hinckley, RNAV (GPS) Y RWY 3, Orig
Ogden, UT, Ogden-Hinckley, RNAV (GPS) Z RWY 3, Orig
Ogden, UT, Ogden-Hinckley, GPS RWY 3, Orig, CANCELLED

The FAA published an Amendment in Docket No. 30452, Amdt No. 3128 to Part 97 of the Federal Aviation Regulations (Vol. 70, FR No. 155, page 47091, dated 12 Aug 2005)

Under section 97.27 effective for 1 Sep 2005 which is hereby correcting the Airport Name to read as follows:

Sacramento, CA, Sacramento Executive, NDB RWY 2, Amdt 9, CANCELLED

The FAA published an Amendment in Docket No. 30452, Amdt No. 3128 to Part 97 of the Federal Aviation Regulations (Vol. 70, FR No. 155, page 47092, dated 12 Aug 2005) Under section 97.27 effective for 1 Sep 2005 which is hereby correcting the City Name to read as follows:

Whitefield, NH, Mount Washington Regional, NDB RWY 10, Amdt 8, CANCELLED

The FAA published an Amendment in Docket No. 30452, Amdt No. 3128 to Part 97 of the Federal Aviation Regulations (Vol. 70, FR No. 155, page 47091, dated 12 Aug 2005) Under section 97.27 effective for 1 Sep 2005 which is hereby rescinding the Cancellation in its entirety:

Chandler, AZ, Chandler Muni, NDB RWY 4R, Orig-A, CANCELLED

The FAA published an Amendment in Docket No. 30452, Amdt No. 3128 to Part 97 of the Federal Aviation Regulations (Vol. 70, FR No. 155, page 47093, dated 12 Aug 2005) Under section 97.29 effective for 1 Sep 2005 which are hereby corrected to be effective for 27 Oct 2005:

Providence, RI, Theodore Francis Green State, ILS OR LOC RWY 5, Amdt 19

The FAA published an Amendment in Docket No. 30452, Amdt No. 3128 to Part 97 of the Federal Aviation Regulations (Vol. 70, FR No. 155, page 47092, dated 12 Aug 2005) Under section 97.27 effective for 1 Sep 2005 which is hereby corrected to read:

St. Petersburg-Clearwater, Fl, St. Petersburg-Clearwater Intl, NDB RWY 17L, Amdt 20C, CANCELLED

[FR Doc. 05–16408 Filed 8–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–041]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comment.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Dominion Boulevard (US 17) Bridge across the Southern Branch of the Elizabeth River, at Atlantic Intracoastal Waterway (AICW) mile 8.8, at Chesapeake, Virginia. This rule will change the morning rush hour closure period so that it starts at 7 a.m. and ends at 9 a.m. From 9 a.m. to 4 p.m., Monday through Friday, and from 7 a.m. to 6 p.m. on Saturdays, Sundays and Federal holidays, the draw need be opened every hour on the hour. This change is necessary to relieve vehicular traffic congestion and reduce traffic delays during weekday rush hour periods, and on weekends and Federal holidays, while still providing for the reasonable needs of navigation.

DATES: This rule is effective September 19, 2005. Comments and related material must reach the Coast Guard on or before October 3, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of docket number CGD05–05–041 and will be available for inspection or copying at Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

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 (CGD05–05–041), 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 a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment period. We may change this interim rule in view of them.

Regulatory History

The Coast Guard published in the **Federal Register** a temporary 90-day deviation and request for comments from the drawbridge operation regulations in an effort to test an alternate drawbridge operation schedule and to solicit comments from the public (69 FR 75472, Dec. 17, 2004). The deviation was in effect from December 13, 2004 to March 13, 2005, and from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw was opened only every hour on the half hour. Fifty-two e-mail messages and 4 on-paper responses were received during the comment period that ended March 14, 2005.

On May 10, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AICW), Elizabeth River, Southern Branch, VA'' in the **Federal Register** (70 FR 24492). We received 690 comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

Current regulations require the Dominion Boulevard (US 17) Bridge across the Southern Branch of the Elizabeth River, at AICW mile 8.8, to open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials. From 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of recreational vessels and the draw need not open for commercial cargo vessels carrying non-hazardous material that do not provide a 2-hour advance notice. In addition, from Memorial Day to Labor Day, from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw is opened only every hour on the half-hour.

On December 17, 2004, we published a notice of temporary deviation from the regulations and request for comments entitled ''Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AICW), Elizabeth River, Southern Branch, VA'' in the **Federal Register** (69 FR 75472). The temporary deviation was an effort to test an alternate drawbridge operation schedule for 90 days and to solicit comments from the public. In accordance with the temporary deviation, from December 13, 2004 to March 13, 2005, from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw was opened only every hour on the half hour.

The Coast Guard received 52 e-mail messages and 4 on-paper responses commenting on the provisions of the temporary deviation. The majority of the comments, from motorists, favored scheduled versus unscheduled bridge openings, so they could better plan their movements. Many respondents

indicated that even though the vehicular rush hour traffic starts at 6:30 a.m., the weekday rush hour traffic peaks between 7 a.m. and 9 a.m. In addition, they stated a preference that commercial vessels carrying non-hazardous materials be regulated. However, since tugs and tugs with tows have no place to tie up in the proximity of the bridge in order to wait for a bridge opening, the Coast Guard will continue to include them in the 2-hour advance notice requirement.

The NPRM, which was published on May 10, 2005, proposed on-signal openings for commercial vessels carrying hazardous materials and for commercial vessels that provide a two-hour advance notice. In addition, the NPRM proposed that year-round from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw need be opened every hour on the hour; from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday to Friday, except Federal holidays, the draw need not open for recreational vessels, and need not open for commercial vessels carrying non-hazardous material that do not provide a 2-hour advance notice.

After publication of the proposal, we received 690 comments from the public. The majority of respondents favored scheduled openings of the drawbridge year-round between the morning and evening rush hour periods.

This interim rule, when implemented, will ease vehicle traffic congestion which results from unscheduled openings of the drawbridge. In addition, this interim rule changes the morning rush hour period so that it starts at 7 a.m. and ends at 9 a.m., Monday to Friday, except Federal holidays. Therefore, the first drawbridge opening for vessels after the morning rush hour will occur at 9 a.m. and the last opening before the evening rush hour will be at 4 p.m. The Dominion Boulevard Bridge will open for vessels every hour on the hour between 9 a.m. and 4 p.m., Monday through Friday and from 7 a.m. to 6 p.m. on Saturdays, Sundays and Federal holidays.

These changes will coincide with the operation of the Great Bridge (S168) and the Great Bridge Locks (the Locks) and enable transient craft to reduce delays in navigating the AICW, while also helping to ease vehicular traffic congestion. These changes to the bridge operating regulations are reasonable because the interim rule will relieve vehicular traffic congestion and reduce traffic delays between weekday rush hour periods, and on weekends and Federal holidays, while still providing for the reasonable needs of navigation.

Discussion of Comments and Changes

The Coast Guard received 690 responses to the NPRM. The vast majority of those comments (approximately 647) were supplied from an internet Web site survey posted by the City of Chesapeake. The other responses were supplied by 24 on-paper comments; 17 e-mails and 2 resolutions (1 from the Virginia State Legislators, and the other from the City Council for the City of Chesapeake).

An examination of the comments revealed that most of the respondents (about 60 percent), during the weekday, use their vehicles on the bridge in the morning between 7 a.m. to 8 a.m. and over 60 percent of the motoring public crosses the Dominion Boulevard Bridge on the weekends. Also, mariners in general suggested that if the Dominion Boulevard Bridge must open only once each hour, that an on the hour opening would be better.

Additionally, the City of Chesapeake (hereinafter the City) which owns and operates the drawbridge submitted a City Council resolution that offered changes to the proposed regulation. The City asserts that since traffic volumes on the weekends on Dominion Boulevard average around 24,000 vehicles per day compared with approximately 30,000 vehicles on weekdays, that the Coast Guard should consider restricting drawbridge openings on weekends from 6 a.m. to 7 p.m. to every hour on the hour with no rush hour restrictions and also maintain the existing weekday morning rush hour period from 6:30 a.m. to 8:30 a.m.

The Coast Guard examined the operation of the Great Bridge (S168) across the Albemarle and Chesapeake at AICW mile 12.0 and the Locks located just south of the Dominion Boulevard Bridge. The Great Bridge (S168) provides vessel openings on the hour between 6 a.m. to 7 p.m., seven days a week, year-round. The Locks, owned and operated by the U.S. Army Corps of Engineers, opens for vessels on demand from 7 a.m. to 6 p.m.

As a result of comments received, changes were made to the NPRM and this interim rule will relieve vehicular traffic congestion and reduce traffic delays between weekday rush hour periods, and on weekends and Federal holidays, while still providing for the reasonable needs of navigation.

The Coast Guard amends 33 CFR § 117.997(g), by revising paragraphs (g)(2) through (g)(4). Paragraph (g)(2) modifies the morning closure period during rush hour to 7 a.m. to 9 a.m., Monday through Friday, except Federal holidays. Paragraph (g)(3) would delete the phrase ''From Memorial Day to Labor Day'' and modify the paragraph to read ''From 9 a.m. to 4 p.m., Monday through Friday, and from 7 a.m. to 6 p.m. on Saturdays, Sundays and Federal holidays, the draw need only be opened every hour on the hour. During these hours, the draw will continue to open on signal for commercial vessels carrying liquefied flammable gas or other hazardous materials, and for commercial cargo vessels not carrying hazardous materials, including tugs and tugs with tows, when notice has been given at least 2 hours in advance.'' Paragraph (g)(4) would replace the wording from ''on the half hour'' to ''on the hour''.

Regulatory Evaluation

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

This conclusion is based on the fact that the changes will have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their transits in accordance with the scheduled bridge openings to minimize delays.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the rule adds only minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the scheduled bridge openings minimize delays.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in

understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. No assistance was requested from any small entity.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Revise section 117.997, paragraphs (g)(2), (g)(3), and (g)(4), to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(g) * * *

(1) * * *

(2) From 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, need not open for the passage of recreational vessels, and need open for commercial cargo vessels not carrying hazardous materials, including tugs and tugs with tows, only when notice has been given at least 2 hours in advance to the Dominion Boulevard Bridge at (757) 547–0521.

(3) From 9 a.m. to 4 p.m., Monday through Friday, and from 7 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need only be opened every hour on the hour. During these hours, the draw will continue to open on signal for commercial vessels carrying liquefied flammable gas or other hazardous materials, and for commercial cargo vessels not carrying hazardous materials, including tugs and tugs with tows, when notice has been given at least 2 hours in advance.

(4) If any vessel is approaching the bridge and cannot reach the draw exactly on the hour, the drawtender may delay the opening up to ten minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting to pass.

* * * * *

Dated: August 11, 2005.

L.L. Hereth,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05–16494 Filed 8–18–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0011; FRL–7955–9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Attainment Demonstration of the Austin Early Action Compact Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Chairman of the Texas Commission on Environmental Quality (TCEQ) on December 6, 2004. The revisions demonstrate attainment and maintenance of the 8-hour ozone standard and incorporate the Austin Early Action Compact (EAC) Clean Air Action Plan (CAAP) into the Texas SIP. EPA is approving the photochemical modeling in support of the attainment demonstration for the 8-hour ozone standard within the Austin EAC area. EPA is approving the Austin EAC CAAP, which includes control measures and demonstrates maintenance of the standard through 2012. These actions strengthen the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act) and will result in emission reductions needed to help ensure attainment and maintenance of the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone.

DATES: This final rule is effective on September 19, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Materials in EDocket (RME) ID No. R06–OAR–2005–TX–0011. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/;* once in the system, select ''quick search,'' then type in the appropriate RME docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information the disclosure of which 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 RME or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below, or Mr. Bill Deese at 214–665–7253, to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6521, *paige.carrie@epa.gov.*

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

Outline

I. Background
II. What Action Is EPA Taking?
III. What Comments Did EPA Receive on the May 23, 2005 Proposed Rulemaking for Austin?
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

On May 23, 2005, EPA proposed approval of the Austin EAC area's CAAP, the photochemical modeling in support of the attainment and maintenance demonstration and related control measures, including a vehicle inspection and maintenance (I/M) program, as revisions to the SIP submitted to EPA by the TCEQ. The photochemical modeling demonstrates that the specified control measures will provide for attainment of the 8-hour ozone standard by December 31, 2007 and maintenance of the standard through 2012. The proposal provides a detailed description of these revisions and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on June 22, 2005. See the Technical Support Documents or our proposed rulemaking at 70 FR 29461 for more information. No comments were received on EPA's proposed approval of the I/M Program and therefore, that portion of the proposal is addressed in a separate rulemaking (70 FR 45542, published August 8, 2005). Three comments, one of which is adverse, were received on EPA's proposed approval of the Austin EAC area's CAAP and 8-hour ozone attainment demonstration for the EAC area.

II. What Action Is EPA Taking?

Today we are approving revisions to the Texas SIP under sections 110 and 116 of the Act. The revisions demonstrate attainment and maintenance of the 8-hour ozone standard within the Austin EAC area. The revisions include the Austin EAC CAAP, photochemical modeling and related control measures. The intent of the SIP revisions is to reduce ozone pollution and thereby maintain the 8-hour ozone standard.

III. What Comments Did EPA Receive on the May 23, 2005 Proposed Rulemaking for Austin?

We received three comment letters on the May 23, 2005 proposed rulemaking. The comments provided both supportive and adverse discourse.

Comment: Two comment letters support EPA's approval of the EAC SIP revisions and the third letter commends the State of Texas for steps it has taken to improve air quality.

Response: We appreciate the support expressed towards the State of Texas and towards the efforts made to ensure that the citizens in the Austin EAC area continue to breathe clean air. We continue to believe that the EAC program, as designed, gives Austin the flexibility to develop their own approach to maintaining the 8-hour ozone standard and believe Austin is serious in their commitment to control emissions from local sources. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizen groups, Austin is implementing regional cooperation in solving air quality problems that affect the health and welfare of its citizens. Through implementation of the CAAP, people living in the Austin EAC area will realize reductions in pollution levels and enjoy the health benefits of cleaner air sooner than might otherwise occur.

Comment: One letter contends that EPA lacks the authority to approve EACs and expressed opposition to the approval of the Austin SIP revision because, since the area experienced a violation of the 8-hour ozone standard, the SIP revision (1) provides for the deferment of the area's nonattainment

designation to as late as December 31, 2007, and (2) relieves the area of its obligations under Title I, Subpart D of the Act. The commenter contends that EPA does not have the legal authority to defer the effective date of an area's nonattainment designation nor to relieve areas of the obligations of Title I, Subpart D of the Act while areas are violating the standard and are designated nonattainment.

Response: In the April 2004 designation rule (69 FR 23858), the Austin EAC area was designated as attainment for the 8-hour ozone NAAQS. The commenter incorrectly asserts that approval of this SIP revision provides for deferment of the effective date of the area's nonattainment designation while the area is in violation of the 8-hour ozone standard. Nor does EPA's approval of this SIP alter the applicability of the redesignation provision of the Act. Section 107(d)(3)(A) provides that EPA may redesignate an area ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations.'' Should the Austin EAC area experience a violation of the 8-hour ozone NAAQS, EPA would consider these statutory factors in determining whether to redesignate the area to nonattainment for the 8-hour ozone NAAQS. The commenter is incorrect that this SIP approval relieves the Austin EAC area of the requirements of Part D of Title I of the Act. These provisions apply to areas designated nonattainment. Because the Austin EAC area is designated attainment for the 8-hour ozone NAAQS, these provisions do not apply in the Austin EAC area.

IV. Final Action

EPA is approving the attainment demonstration, the Austin EAC CAAP, and the related control measures and we are incorporating these revisions into the Texas SIP. We have determined that the control measures included in the attainment demonstration are quantified, surplus, permanent, and are Federally enforceable once approved into the SIP. The modeling of ozone and ozone precursor emissions from sources in the Austin EAC area demonstrate that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007 and maintenance of that standard through 2012. We have reviewed the CAAP and the attainment demonstration and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), 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. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: August 12, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The second table in § 52.2270(e) entitled ''EPA approved nonregulatory provisions and quasi-regulatory measures in the Texas SIP'' is amended by adding a new entry, immediately following the last entry in the table, to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* *	* *	*	*	*
Clean Air Action Plan, 8-hour ozone standard attainment demonstration, and Transportation Emission Reduction Measures (TERMs) for the Austin EAC area.	Bastrop, Caldwell, Hays, Travis and Williamson Counties, TX.	12/06/04	8/19/05 [Insert FR page number where document begins].	

[FR Doc. 05–16490 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0009; FRL–7956–1]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Clean Air Action Plan and Attainment Demonstration for the Northeast Texas Early Action Compact Area; Agreed Orders Regarding Control of Air Pollution for the Northeast Texas Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Texas State Implementation Plan (SIP) submitted on July 18, 2002 and December 6, 2004. Approval will incorporate the following changes into the SIP: the Clean Air Action Plan (CAAP), a demonstration of attainment and maintenance for the 8-hour ozone national ambient air quality standard (NAAQS) in the Northeast Texas Early Action Compact (EAC) area, and the associated control measures. EPA is approving the photochemical modeling in support of the attainment demonstration for the 8-hour ozone standard within the Northeast Texas EAC area. These actions strengthen the SIP in accordance with sections 110 and 116 of the Federal Clean Air Act (CAA) and will result in emission reductions needed to help ensure attainment and maintenance of the 8-hour ozone NAAQS in Northeast Texas.

DATES: This rule is effective on September 19, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Materials in EDocket (RME) Docket ID No. R06–OAR–2005–TX–0009. All documents in the docket are listed in the Regional Materials in EDocket (RME) index at *http://docket.epa.gov/rmepub/;* once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information the disclosure of which 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 RME or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6645; fax number 214–665–7263; e-mail address *young.carl@epa.gov.*

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

Outline

I. What Action Is EPA Taking?
II. What Comments Did EPA Receive on the May 16, 2005 Proposed Rulemaking for Northeast Texas?
III. Final Action
IV. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

Today we are approving the two revisions submitted by the State on July 18, 2002, and December 6, 2004, into the Texas SIP that pertain to Northeast Texas under sections 110 and 116 of the CAA. The revisions demonstrate continued attainment and maintenance of the 8-hour ozone standard within the Northeast Texas EAC area. The 2004 revision includes the CAAP and the photochemical modeling. The 2002 revision pertains to the related control measures relied upon in the modeling and are Agreed Orders regarding control of air pollution for the Northeast Texas area by (1) American Electric Power Company, (2) TXU Generation Company LP and (3) Eastman Chemical Company.

The intent of the SIP revisions is to reduce ozone pollution and thereby maintain the 8-hour ozone standard.

On May 16, 2005, EPA proposed approval of the Northeast Texas EAC area's CAAP, the photochemical modeling in support of the attainment demonstration, and related control measures as revisions to the SIP submitted to EPA by the State of Texas. The proposal provides a detailed description of each of these revisions and the rationale for each of EPA's proposed actions, together with a discussion of the opportunity to comment. For more information, see the Technical Support Documents or our proposal at 70 FR 25794. The public comment period for these actions closed on June 15, 2005. One adverse comment letter was received on EPA's proposed approval of the Northeast Texas EAC Plan and 8-hour ozone attainment demonstration for the EAC area.

II. What Comments Did EPA Receive on the May 16, 2005 Proposed Rulemaking for Northeast Texas?

We received one comment letter on the May 16, 2005 proposed rulemaking for Northeast Texas. The letter provided both supportive and adverse comments. The commenter commends the State of Texas for steps it has taken to improve air quality. The commenter states that they oppose approval of the SIP revision because, should the Northeast Texas EAC area experience a violation of the 8-hour ozone standard, the SIP revision (1) provides for the deferment of the area's nonattainment designation to as late as December 31, 2007, and (2) relieves the area of its obligations under Title I, Subpart D of the CAA. The commenter contends that EPA does not have the legal authority to defer the effective date of an area's nonattainment designation nor to relieve areas of the obligations of Part D of Title I of the CAA when areas are violating the standard and designated nonattainment.

Response: We appreciate the support expressed towards the State of Texas and towards the efforts made to ensure that the citizens in the Northeast Texas area continue to breathe clean air. We continue to believe that the EAC program, as designed, gives Northeast Texas the flexibility to develop their own approach to maintaining the 8-hour ozone standard and believe Northeast Texas is serious in their commitment to control emissions from local sources. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizen groups, the Northeast Texas area is implementing regional cooperation in solving air quality problems that affect the health and welfare of its citizens. Through implementation of the plan, people living in the Northeast Texas EAC area will realize reductions in pollution levels and enjoy the health benefits of cleaner air sooner than might otherwise occur.

In the April 2004 designation rule (69 FR 23858), the Northeast Texas EAC area was designated as attainment for the 8-hour ozone NAAQS. The commenter incorrectly asserts that this SIP revision provides for deferment of the designation of the area as nonattainment should the area experience a violation of the 8-hour ozone standard. Nor does EPA's approval of this SIP alter the applicability of the redesignation provision of the Act should the Northeast Texas EAC area experience a violation of the 8-hour ozone NAAQS in the future. Section 107(d)(3)(A) provides that EPA may redesignate an area ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations.'' Should the Northeast Texas EAC area experience a violation of the 8-hour ozone NAAQS in the future, EPA would consider these statutory factors in determining whether to redesignate the area to nonattainment for the 8-hour ozone NAAQS. The commenter is also incorrect that this SIP approval relieves the Northeast Texas EAC area of the requirements of Part D of Title I of the Act. These provisions apply to areas designated nonattainment. Because the Northeast Texas EAC area is designated attainment for the 8-hour ozone NAAQS, these provisions do not apply in the Northeast Texas EAC area.

III. Final Action

We are approving revisions to the Texas SIP pertaining to the Northeast Texas EAC area. EPA is approving the attainment demonstration, the Northeast Texas Clean Air Action Plan, and the related control measures, and we are incorporating these revisions into the Texas SIP. We have determined that the control measures included in the attainment demonstration are quantified, surplus, permanent, and are Federally enforceable once approved into the SIP. The modeling of ozone and ozone precursor emissions from sources in the Northeast Texas EAC area demonstrate that the specified control strategies will provide for continued attainment of the 8-hour ozone NAAQS through December 31, 2007 and maintenance of that standard through 2012. We have reviewed the Plan and the attainment and maintenance demonstration and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 12, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(d) entitled ''EPA-Approved State Source-Specific Requirements'' is amended by adding three new entries at the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED STATE SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit or order No.	State effective date	EPA approval date	Comments
*	*	*	*	*
American Electric Power Knox Lee Plant (Gregg Co.), Pirkey Plant (Harrison Co.), Wilkes Plant (Cass Co.).	2001–0878–RUL	03/13/02	8/19/05 [Insert *FR* page number where document begins].	
Texas Utilities Martin Lake plant (Rusk Co.), Monticello plant (Titus Co.).	2001–0879–RUL	03/13/02	8/19/05 [Insert *FR* page number where document begins].	
Eastman Chemical Company Longview plant (Harrison Co.).	2001–0880–RUL	03/13/02	8/19/05 [Insert *FR* page number where document begins].	

■ 3. The second table in § 52.2270(e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding a new entry to the end to read as follows:

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
*	*	*	*	*
Clean Air Action Plan and 8-hour ozone standard attainment demonstration for the Northeast Texas Early Action Compact area.	Gregg, Harrison, Rusk, Smith and Upshur Counties, TX.	12/06/04	8/19/05 [Insert *FR* page number where document begins].	

[FR Doc. 05–16489 Filed 8–18–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–OK–0002; FRL–7956–2]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Attainment Demonstration for the Tulsa Early Action Compact Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to the Oklahoma State Implementation Plan (SIP) submitted by the Secretary of the Environment on December 22, 2004. The revision will incorporate a Memorandum of Agreement (MOA) between the Oklahoma Department of Environmental Quality (ODEQ) and the Indian Nation Council of Governments (INCOG) into the Oklahoma SIP and includes a demonstration of attainment and maintenance for the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. The MOA outlines duties and responsibilities of each party for implementation of pollution control measures for the Tulsa Metropolitan Area Early Action Compact (EAC) area. EPA is approving the photochemical modeling in support of the attainment demonstration for the 8-hour ozone standard within the Tulsa EAC area and is approving the associated control measures. These actions strengthen the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act) and will result in emission reductions needed to help ensure attainment and maintenance of the 8-hour NAAQS for ozone.

DATES: This final rule is effective on September 19, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Materials in EDocket (RME) ID No. R06–OAR–2005–OK–0002. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/*; once in the system, select ''quick search,'' then type in the appropriate RME docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information the disclosure of which 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 RME or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below, or Mr. Bill Deese at (214) 665–7253, to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, Oklahoma City, OK 73101–1677.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6521, *paige.carrie@epa.gov*.

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

Outline

I. Background
II. What Action Is EPA Taking?
III. What Comments Did EPA Receive on the May 12, 2005 Proposed Rulemaking for the Tulsa EAC Area?
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

On May 12, 2005, EPA proposed approval of the Tulsa EAC area's clean air action plan (Plan), the photochemical modeling in support of the attainment demonstration and related control measures as revisions to the SIP submitted to EPA by the State of Oklahoma. The proposal provides a detailed description of these revisions and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on June 13, 2005. See the Technical Support Documents or our proposed rulemaking at 70 FR 25004 for more information. One adverse comment was received on EPA's proposed approval of the Tulsa EAC Plan and 8-hour ozone attainment demonstration for the EAC area.

II. What Action Is EPA Taking?

Today we are approving revisions to the Oklahoma SIP under sections 110 and 116 of the Act. The revisions demonstrate continued attainment and maintenance of the 8-hour ozone standard within the Tulsa EAC area. The revisions include the Tulsa EAC Plan, photochemical modeling and related control measures. The intent of the SIP revisions is to reduce ozone pollution and thereby maintain the 8-hour ozone standard.

III. What Comments Did EPA Receive on the May 12, 2005 Proposed Rulemaking for Tulsa?

We received one comment letter on the May 12, 2005 proposed rulemaking. The letter provided both supportive and adverse discourse, commending the State of Oklahoma for steps it has taken to improve air quality. The commenter opposes approval of the SIP revision because, should the area experience a violation of the 8-hour ozone standard, the SIP revision (1) provides for the deferment of the area's nonattainment designation to as late as December 31, 2007, and (2) relieves the area of its obligations under Title I, Subpart D of the Act. The commenter contends that EPA does not have the legal authority to defer the effective date of an area's nonattainment designation nor to relieve areas of the obligations of Part D of Title I of the Act when areas are violating the standard and designated nonattainment.

Response: We appreciate the support expressed towards the State of Oklahoma and towards the efforts made to ensure that the citizens in the Tulsa EAC area continue to breathe clean air. We continue to believe that the EAC program, as designed, gives Tulsa the flexibility to develop their own approach to maintaining the 8-hour ozone standard and believe Tulsa is serious in their commitment to control emissions from local sources. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizen groups, Tulsa is implementing regional cooperation in solving air quality problems that affect the health and welfare of its citizens. People living in the Tulsa EAC area will realize reductions in pollution levels and enjoy the health benefits of cleaner air sooner than might otherwise occur.

In the April 2004 designation rule (69 FR 23858), the Tulsa EAC area was designated as attainment for the 8-hour ozone NAAQS. The commenter incorrectly asserts that this SIP revision provides for deferment of the designation of the area as nonattainment should the area experience a violation of the 8-hour ozone standard. Nor does EPA's approval of this SIP alter the applicability of the redesignation provision of the Act should the Tulsa EAC area experience a violation of the 8-hour ozone NAAQS in the future. Section 107(d)(3)(A) provides that EPA may redesignate an area ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations.'' Should the Tulsa EAC area experience a violation of the 8-hour ozone NAAQS in the future, EPA would consider these statutory factors in determining whether to redesignate the area to nonattainment for the 8-hour ozone NAAQS. The commenter is also incorrect that this SIP approval relieves the Tulsa EAC area of the requirements of Part D of Title I of the Act. These provisions apply to areas designated nonattainment. Because the Tulsa EAC area is designated attainment for the 8-hour ozone NAAQS, these provisions do not apply in the Tulsa EAC area.

IV. Final Action

EPA is approving the attainment demonstration, the Tulsa EAC Plan, and the related control measures, and we are incorporating these revisions, as well as the MOA, into the Oklahoma SIP. We have determined that the control measures included in the attainment demonstration are quantified, surplus, permanent, and are Federally enforceable once approved into the SIP. The modeling of ozone and ozone precursor emissions from sources in the Tulsa EAC area demonstrate that the specified control strategies will provide for continued attainment of the 8-hour ozone NAAQS through December 31, 2007 and maintenance of that standard through 2012. We have reviewed the Plan and the attainment and maintenance demonstration and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, 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 approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this 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 approves 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).

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. This rule incorporates an MOA between the ODEQ and INCOG into the Oklahoma SIP. The MOA was the result of numerous discussions between local communities and State air quality officials. Tribal officials were invited to participate in the process of developing the Early Action Compact, but chose not to send a representative to any of the meetings. Local communities and State air quality officials voluntarily agreed to implement this rule revision so that the Tulsa EAC area could continue to attain and maintain the 8-hour ozone standard.

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), 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. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxides, Ozone,

Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: August 12, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart LL—Oklahoma

■ 2. The first table in § 52.1920(e) entitled ''EPA approved nonregulatory provisions and quasi-regulatory measures'' is amended under Chapter 4, immediately following the last entry under Chapter 4, to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED OKLAHOMA NONREGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
* *	* *	*	*	*
K. Tulsa EAC Area 8-hour ozone standard attainment demonstration, Clean Air Plan, Transportation Emission Reduction Strategies, and Memorandum of Agreement between the ODEQ and INCOG defining duties and responsibilities of each party for implementation of the Tulsa Area Transportation Emission Reduction Strategies.	Tulsa County and portions of Creek, Osage, Rogers and Wagoner Counties.	12/22/2004	8/19/05 [Insert *FR* page number where document begins].	
* *	* *	*	*	*

[FR Doc. 05–16488 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0021; FRL–7956–3]

Approval and Promulgation of Implementation Plans; State of Texas; Control of Air Pollution From Motor Vehicles, Mobile Source Incentive Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to the Texas State Implementation Plan (SIP) to incorporate the Texas Emission Reduction Plan (TERP) into the Texas SIP. The TERP is utilized in each of the nonattainment areas and near nonattainment areas in the State to achieve reductions in the emissions of oxides of nitrogen from on-road and non-road mobile sources. This action will allow the State to capture credit from those reductions and use them in attainment demonstrations for these areas.

DATES: This rule is effective on September 19, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Materials in EDocket (RME) Docket ID No. R06–OAR–2005–TX–0021. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/,* once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information, the disclosure of which 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 RME or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below, or Mr. Bill Deese at (214) 665–7253, to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367; fax (214) 665–7263; e-mail address *rennie.sandra@epa.gov.*

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

Outline

What Action Are We Taking?
What Is the Background for This Action?
What Do These Rules Require?
What Are Oxides of Nitrogen?
What Areas in Texas Will This Action Affect?
Why Are We Approving This Submittal?
What Comments Did We Receive?
Final Rule
Statutory and Executive Order Reviews

What Action Are We Taking?

We are approving this revision to the SIP as meeting the requirements of the economic incentive program guidance. For a more complete description of our review, please see the technical support document for this action and our **Federal Register** notice of proposed approval dated May 12, 2005 (70 FR 25008).

We are approving rules that implement the TERP legislation. On March 9, 2005, the Texas Commission on Environmental Quality submitted to

EPA the Texas Emission Reduction Plan (TERP) at 30 TAC, Chapter 114, Subchapter K, Mobile Source Incentive Programs, as a revision to the SIP. This legislation created an economic incentive program to accelerate the introduction of lower emitting mobile source technologies in nonattainment and near nonattainment areas of Texas. The State adopted these rules on August 22, 2001.

We are also approving revisions to the above mentioned rules which the State adopted on January 28, 2004, and submitted to EPA on March 3, 2004.

What Is the Background for This Action?

In 2001, the Texas Legislature enacted Senate Bill 5 which established the TERP. The TERP includes a grant program designed to accelerate the early introduction and use of lower emitting diesel technologies in the nonattainment and near nonattainment areas of Texas; a grant program to fund improved energy efficiency in buildings; purchase and lease incentives to encourage the introduction of cleaner light duty vehicles into the Texas fleet; and funding for research and development programs focused on new air pollution reduction technologies. This legislation also establishes a state-wide incentive program for the purchase or lease of new on-road diesel vehicles and light-duty motor vehicles that meet more stringent emission standards than those required by any federal requirements. The incentives eligible for on-road diesel vehicles are for the incremental cost to purchase the cleaner vehicle. The incentive for eligible light duty vehicles are a specified dollar amount. Each of the incentives is structured upon the specific emission standard to which the vehicle is certified.

In 2003, Texas House Bill 1365 amended surcharges and fees which fund TERP, along with the eligibility criteria. The 2003 adoption adds three counties to the list where eligible projects may be funded and will include for the future any other county located within an area of Texas designated as an ozone nonattainment area under the Federal Clean Air Act. The amendment also provides for the new methods for streamlining the grant process for small business. The 2003 legislation expected to provide approximately $120 million dollars per year for funding those programs through September 2008.

What Do These Rules Require?

TERP includes a number of voluntary incentive and assistance programs designed to help improve the air quality in Texas. The programs included in TERP are as follows: the On-Road Diesel Vehicle Purchase or Lease Incentive Program, the Light-Duty Motor Vehicle Purchase or Lease Incentive Program, and the Diesel Emission Reduction Incentive Grant Program for On-Road and Non-Road Vehicles (''Incentive Grant Program''). It is the Incentive Grant Program that is before us as a SIP revision.

The rules approved today specify the individuals and businesses that may apply for grants under TERP and that all applicants are subject to the criteria listed in *Texas Emission Reduction Plan: Guidance for Emissions Reduction Incentive Grants Program* (RG–388). Eligible projects include multiple variations of leasing or purchasing, retrofitting, repowering, or other NO_X reducing technologies for on-road and off-road diesel powered engines. The rule requires that any project funded by a grant must operate no less than 75% of the vehicle miles traveled or hours of operations over the following five years in a nonattainment or near nonattainment county.

The plan also requires that a project, excluding infrastructure projects, must meet a minimum cost-effectiveness not to exceed $13,000 per ton of NO_X emissions. Except in extreme circumstances, the emissions reductions gained by any project funded through a TERP grant may not be used for credit under any State or Federal emission reduction credit averaging, banking or trading program. The program allows TERP reductions to be credited toward the NO_X cap and trade program in Houston but only in the unlikely event that the industrial source's compliance cost exceeds $75,000/ton. In that case, the source would be able to deposit $75,000/ton into the TERP account where the money would be used to achieve more cost effective mobile source reductions.

What Are Oxides of Nitrogen?

Nitrogen oxides (NO_X) belong to the group of criteria air pollutants. NO_X results from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC's) to form ozone or smog. NO_X is also a major component of acid rain.

What Areas in Texas Will This Action Affect?

The approval of TERP will provide potential emission reductions in the following counties: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Harris, Hardin, Harrison, Hayes, Henderson, Hood, Hunt, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, Victoria, Waller, Williamson, Wilson, and any other county located within an area of Texas designated as nonattaiment for ground-level ozone.

Why Are We Approving This Submittal?

TERP is a measure relied upon in the State Implementation Plans for all of the Early Action Compact areas, as well as the Houston/Galveston Attainment Demonstration, and the Dallas/Fort Worth 5% Increment of Progress Plan. We will be taking action on the amount of emission reductions projected for the TERP program when we take action on these plan revisions. These reductions will assist an area to either attain or maintain the National Ambient Air Quality Standard for ozone.

Diesel engines are targeted due to their relatively high NO_X emissions and their long operational life which makes the introduction of newer cleaner engines into a fleet a long term process with normal turnover. The TERP will offset the incremental cost of projects that can reduce oxides of nitrogen emissions from heavy duty diesel trucks and construction equipment in nonattainment areas. This is an incentive to owners and operators to upgrade their fleets at an expedited rate. The upgrade of these fleets will reduce the amount of NO_X emissions to the atmosphere. This approval will add TERP as a new program to the Texas SIP. TERP will not cause an increase in the criteria pollutants or their precursors since old fleets will be replaced with new fleets, thereby reducing emissions. As such, the State's revisions meet and comply with the requirements of section 110(l) of the Clean Air Act. We are approving these revisions to the Texas SIP because they will contribute to the attainment of the ozone standard, and therefore strengthen the SIP.

What Comments Did We Receive?

We proposed approval of this revision to the Texas SIP on May 12, 2005 (70 FR 25008). We received no comments on this proposed approval.

Final Action

We are granting final approval of the TERP as a revision to the SIP because it meets the requirements of an economic incentive program.

Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, ''Regulatory Planning and Review.'' (58 FR 51735, October 4, 1993). This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this 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 approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by State law, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local or tribal governments in the aggregate, or on the private sector, in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments in accordance with section 203 of UMRA.

This rule also does not have tribal implications because it will 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, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it approves a state program.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272 note) requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. In reviewing a SIP submission, EPA has no authority under the Clean Air Act, in the absence of a prior existing requirement for the State to use VCS, to disapprove a SIP submission for failure to use VCS. Thus it would be inconsistent with applicable law for EPA to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act and further consideration of VCS is not required. Under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), OMB must approve all ''collections of information'' by EPA. The PRA defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons.'' (44 U.S.C. 3502(3)(A)). This rule does not impose an information collection burden under the provisions of the PRA.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 11, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 Part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended under Chapter 114, immediately following the entry for Section 114.517, by adding a new centered heading ''Subchapter K—Mobile Source Incentive Programs'' followed by centered heading ''Division 3: Diesel Emission Reduction Incentive Program for On-road and Non-road Vehicles'' followed by entries for Sections 114.620, 114.621, 114.622, 114.623, 114.626 and 114.629 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
*	*	*	*	*
Subchapter K—Mobile Source Incentive Programs				
Division 3: Diesel Emission Reduction Incentive Program for On-road and Non-road Vehicles				
Section 114.620	Definitions	01/28/04	08/19/05 [Insert FR page number where document begins].	
Section 114.621	Applicability	01/28/04	08/19/05 [Insert FR page number where document begins].	
Section 114.622	Incentive Program Requirements.	01/28/04	08/19/05 [Insert FR page number where document begins].	
Section 114.623	Small Business Incentives	01/28/04	08/19/05 [Insert FR page number where document begins].	
Section 114.626	Monitoring, Recordkeeping, and Reporting Requirements.	08/22/01	08/19/05 [Insert FR page number where document begins].	
Section 114.629	Affected Counties and Implementation Schedule.	01/28/04	08/19/05 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 05–16487 Filed 8–18–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–CO–0004; FRL–7954–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Greeley Revised Carbon Monoxide Maintenance Plan and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 17, 2005, EPA published a notice of proposed rulemaking (NPR) to propose approval of Colorado's revised maintenance plan for the Greeley carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). In that NPR, EPA proposed to approve the revised maintenance plan, the transportation conformity motor vehicle emission budgets for 2005 through 2009, 2010 through 2014, and 2015 and beyond, the revisions to Colorado's Regulation No. 11 ''Motor Vehicle Emissions Inspection Program,'' and the revisions to Colorado's Regulation No. 13 ''Oxygenated Fuels Program.'' In this action, EPA is approving the Greeley CO revised maintenance plan, the transportation conformity motor vehicle emission budgets, and the revisions to Regulation No. 11 and Regulation No. 13. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: September 19, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RME R08–OAR–2004–CO–0004. All documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp.* Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone (303) 312–6479, and e-mail at: *russ.tim@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Is the Purpose of This Action?
II. Final Action
III. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *NAAQS* mean National Ambient Air Quality Standard.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The word *State* means the State of Colorado, unless the context indicates otherwise.

I. What Is the Purpose of This Action?

On May 17, 2005, we published an NPR that proposed approval of the Greeley area's revised CO maintenance plan, transportation conformity motor vehicle emissions budgets (MVEB), and associated SIP elements. See 70 FR 28233. The NPR also opened a 30-day public comment period on this proposed Agency action. We did not receive any comments.

In this final action, we are approving the revised Greeley CO maintenance plan that demonstrates maintenance of the CO NAAQS through 2015, we're approving the transportation conformity MVEBs of 63 tons per day (tpd) for 2005 through 2009, 62 tpd for 2010 through 2014, and 60 tpd for 2015 and beyond, we're approving revisions to Regulation No. 11 that the Governor submitted on June 20, 2003 that eliminate the requirement to implement a motor vehicle emissions inspection and maintenance (I/M) program in the Greeley area, and we are approving revisions to Regulation No. 13 that the Governor submitted on June 20, 2003 that eliminate the requirement to implement a winter time oxygenated fuels program in the Greeley area.

Detailed descriptions regarding the revised Greeley CO maintenance plan, the MVEBs, and the revisions to Regulation No. 11 and Regulation No. 13 are provided in our May 17, 2005, NPR action (see 70 FR 28233) and will not be repeated here. Please refer to our May 17, 2005, NPR and Docket ID No. RME R08–OAR–2004–CO–0004. As noted above, all documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp.*

II. Final Action

In this action, EPA is approving the following:

A. The revised Greeley CO maintenance plan. EPA is approving the revised Greeley CO maintenance plan for the CO NAAQS as adopted by the Colorado AQCC on December 19, 2002, and submitted by the Governor to us on June 20, 2003.

B. The transportation motor vehicle emissions budgets. EPA is approving transportation conformity MVEBs contained in the Greeley revised CO maintenance plan and defined as 63 tons per day (tpd) for 2005 through 2009, 62 tpd for 2010 through 2014, and 60 tpd for 2015 and beyond, as adopted by the AQCC on December 19, 2002, State effective on March 2, 2003, and submitted by the Governor to us on June 20, 2003.

C. The revisions to Regulation No. 11. EPA is approving the revisions to Colorado's Regulation No. 11, entitled ''Motor Vehicle Emissions Inspection Program,'' as adopted by the AQCC on December 19, 2002, State effective on March 2, 2003, and submitted by the Governor to us on June 20, 2003.

D. The revisions to Regulation No. 13. EPA is approving the revisions to Colorado's Regulation No. 13, entitled ''Oxygenated Fuels Program,'' as adopted by the AQCC on December 19, 2002, State effective on March 2, 2003, and submitted by the Governor to us on June 20, 2003.

This action will become effective September 19, 2005.

III Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (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. 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of

such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 2, 2005.

Robert E. Roberts,

Regional Administrator, Region VIII.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

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

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(104) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(104) On June 20, 2003, the Governor of Colorado submitted SIP revisions to Colorado's Regulation No. 11 ''Motor Vehicle Emissions Inspection Program'' that eliminate the requirement in the SIP to implement a motor vehicle inspection and maintenance program in Weld County (which includes the Greeley area) after January 1, 2004. On June 20, 2003, the Governor also submitted SIP revisions to Colorado's Regulation No. 13 ''Oxygenated Fuels Program'' that eliminate the oxygenated fuel requirements for Weld County (which includes the Greeley area) after January 1, 2004.

(i) Incorporation by reference.

(A) Regulation No. 11 ''Motor Vehicle Emissions Inspection Program'', 5 CCR 1001–13, Part A.I, second sentence that reads, ''The provisions of this regulation applicable to Larimer and Weld counties shall not be included in the state implementation plan after January 1, 2004.'', as adopted on December 19, 2002, and effective March 2, 2003.

(B) Regulation No. 13 ''Reduction of Carbon Monoxide Emissions from Gasoline Powered Motor Vehicles through the use of Oxygenated Gasolines,'' 5 CCR 1001–16, Part I.D.15, Part II.A, Part II.C, as adopted on December 19, 2002, and effective March 2, 2003.

■ 3. Section 52.349 is amended by adding paragraph (l) to read as follows:

§ 52.349 Control strategy: Carbon monoxide.

* * * * *

(l) Revisions to the Colorado State Implementation Plan entitled ''Revised Carbon Monoxide Maintenance Plan for the Greeley Attainment/Maintenance Area,'' as adopted by the Colorado Air Quality Control Commission on December 19, 2002, and submitted by the Governor on June 20, 2003.

[FR Doc. 05–16486 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2005–CO–0001; FRL–7954–6]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver Early Action Compact Ozone Plan, Attainment Demonstration of the 8-Hour Ozone Standard, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 17, 2005, EPA published a notice of proposed rulemaking (NPR) to propose approval of Colorado's Early Action Compact (EAC) ozone plan for the Denver metropolitan area (hereafter, Denver area) for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). In that NPR, EPA proposed to approve the Denver area's EAC ozone plan, an attainment demonstration for the 8-hour ozone NAAQS, revisions to Colorado's Common Provisions Regulation, revisions to Colorado's Regulation No. 7 ''Emissions of Volatile Organic Compounds'' (hereafter, Regulation No. 7), and revisions to Colorado's Regulation No. 11 ''Motor Vehicle Emissions Inspection Program'' (hereafter Regulation No. 11). In this action, EPA is approving the Denver EAC ozone plan, the associated attainment demonstration, and the revisions to the Common Provisions Regulation, Regulation No. 7, and Regulation No. 11. This action is being taken under section 110 of the Clean Air Act.

DATES: *Effective Date:* September 19, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RME R08–OAR–2005–CO–0001. All documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp.* Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

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III. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *NAAQS* mean National Ambient Air Quality Standard.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The word *State* means the State of Colorado, unless the context indicates otherwise.

I. What Is the Purpose of This Action?

On May 17, 2005, we published an NPR that proposed approval of the Denver area's EAC ozone plan, attainment demonstration, and associated SIP elements. See 70 FR 28239. The NPR also opened a 30-day public comment period on this proposed Agency action. We did not receive any comments.

In this final action, we are approving the Early Action Compact ozone plan

for the Denver area that is designed to demonstrate attainment of the 8-hour ozone NAAQS by December 31, 2007 with additional provisions for continued maintenance of the ozone NAAQS through 2012, we're approving the photochemical modeled attainment demonstration, we're approving certain revisions to the State's Common Provisions Regulation, we're approving revisions to Regulation No. 7 for the control of VOC and NO_X emissions from certain oil and gas exploration and production operations, we're approving revisions to the motor vehicle inspections and maintenance (I/M) requirements in Regulation No. 11 the Governor submitted on July 21, 2004, we're approving several prior I/M revisions to Regulation No. 11, and we are accepting the State's commitment letter, dated March 22, 2005, that addresses certain continuing planning provisions of our EAC Protocol.

Detailed descriptions regarding the Denver EAC Plan, attainment demonstration, and additional SIP elements are provided in our May 17, 2005, NPR action (see 70 FR 28239) and will not be repeated here. Please refer to our May 17, 2005, NPR and Docket ID No. RME R08–OAR–2005–CO–0001. As noted above, all documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp.*

II. Final Action

In this action, EPA is approving the following:

A. The Denver Early Action Compact ozone plan. EPA is approving the Denver Early Action Compact ozone plan, and its associated dispersion modeled attainment demonstration, for the 8-hour ozone NAAQS as adopted by the Colorado AQCC on March 12, 2004, and submitted by the Governor to us on July 21, 2004.

B. The revisions to the Common Provisions Regulation. EPA is approving the revisions to Colorado's Common Provisions Regulation as adopted by the AQCC on March 12, 2004, State effective on May 31, 2004, and submitted by the Governor to us on July 21, 2004.

C. The revisions to Regulation No. 7. EPA is approving the revisions to Colorado's Regulation No. 7, entitled ''Emissions of Volatile Organic Compounds,'' which the AQCC adopted on December 16, 2004, State effective on March 2, 2005, and submitted to us by the Governor on March 24, 2005. These revisions to Regulation No. 7, supercede and replace those adopted by the AQCC on March 12, 2004, State effective on May 31, 2004, that the Governor submitted to us on July 21, 2004 except for the revisions to sections I.A.1, I.A.1.a, I.A.1.b, I.A.1.c, I.B.1.b, and I.B.2.f. We are also approving the foregoing sections from the July 21, 2004 submittal.

D. The revisions to Regulation No. 11. EPA is approving the revisions to Colorado's Regulation No. 11, entitled ''Motor Vehicle Emissions Inspection Program,'' as follows:

(1) Revisions adopted by the AQCC on November 16, 2000, December 20, 2001, August 15, 2002, and October 17, 2002, and submitted by the Governor to us on June 20, 2003;

(2) Revisions adopted by the AQCC on September 18, 2003, and December 18, 2003, and submitted by the Governor to us on April 12, 2004; and

(3) Revisions adopted by the AQCC on March 12, 2004, State effective May 31, 2004, and submitted by the Governor on July 21, 2004.[1]

E. The State's Commitment Letter. EPA is accepting the March 22, 2005, letter from Margie Perkins, Director, Air Pollution Control Division, Colorado Department of Public Health and Environment, to Richard Long, Director, Air and Radiation Program, EPA Region VIII. This letter contained commitments from the State to adhere to and address the continuing planning process requirements contained in the ''Maintenance for Growth'' provisions of EPA's ''Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-Hour Ozone Standards.''

This action will become effective September 19, 2005.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 rule also does not have tribal implications because it will 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). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (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. 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency

[1] While EPA is only approving these changes to Regulation No. 11, EPA is incorporating by reference a complete version of Regulation No. 11 that includes these changes and otherwise conforms to the version of Regulation No. 11 included in the EPA-approved SIP before this action.

promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 2, 2005.

Robert E. Roberts,

Regional Administrator, Region VIII.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

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

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(107) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(107) On July 21, 2004, the Governor submitted revisions to the Colorado State Implementation Plan for Colorado's Common Provisions Regulation that contained a definition for condensate. On July 21, 2004, and on March 24, 2005, the Governor also submitted revisions to the Colorado State Implementation Plan for Colorado's Regulation No. 7 ''Emissions of Volatile Organic Compounds'' that made several changes and additions to sections I.A., I.B., II.A and added new sections XII and XVI. The March 24, 2005 version of Regulation No. 7 superceded and replaced portions of the July 21, 2004 version of Regulation No. 7. On June 20, 2003, April 12 2004, and July 21, 2004, the Governor of Colorado submitted revisions to the Colorado State Implementation Plan for Colorado's Regulation No. 11 ''Motor Vehicle Emissions Inspection Program.''

(i) Incorporation by reference.

(A) Common Provisions Regulation, 5 CCR 1001–2, as adopted on March 12, 2004, effective on May 30, 2004, as follows: Section I.G, definition of ''Condensate.''

(B) Regulation No. 7 ''Emissions of Volatile Organic Compounds,'' 5 CCR 1001–9, as adopted on March 12, 2004, effective on May 31, 2004, as follows: Sections I.A.1, I.A.1.a, I.A.1.b, I.A.1.c, I.B.1.b, and I.B.2.f. As adopted on December 16, 2004, effective March 2, 2005, as follows: Sections I.A.2, II.A.16, II.A.17, XII, and XVI.

(C) Regulation No. 11 ''Motor Vehicle Emissions Inspection Program,'' 5 CCR 1001–13, with changes most recently adopted on March 12, 2004, effective May 31, 2004, as follows: Part A, Part B, Part C, Part D, Part E, Part F, and Appendices A and B, except for the following sentence in Part A.I, which is being acted on separately: ''The provisions of this regulation applicable to Larimer and Weld counties shall not be included in the state implementation plan after January 1, 2004.''

(ii) Additional material.

(A) March 22, 2005, letter from Margie Perkins, Director, Air Pollution Control Division, Colorado Department of Public Health and Environment, to Richard Long, Director, Air and Radiation Program, EPA Region VIII. This letter contained commitments from the State to adhere to and address the continuing planning process requirements contained in the ''Maintenance for Growth'' provisions of EPA's ''Protocol for Early Action Compacts Designed to Achieve and Maintain the 8–Hour Ozone Standards.''

■ 3. Section 52.350 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.350 Control strategy: Ozone.

* * * * *

(b) Revisions to the Colorado State Implementation Plan, 8-hour ozone NAAQS Early Action Compact plan for the metropolitan Denver area entitled ''Early Action Compact Ozone Action Plan,'' excluding sections entitled ''Introduction'' and ''Ozone Monitoring Information,'' as adopted by the Colorado Air Quality Control Commission on March 12, 2004, and submitted by the Governor to us on July 21, 2004.

[FR Doc. 05–16485 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R01–OAR–2005–ME–0005; FRL–7956–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Maine; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Sections 111(d)/129 negative declaration submitted by the Maine Department of Environmental Protection (MEDEP) on May 2, 2005. This negative declaration adequately certifies that there are no existing hospital/medical/infectious waste incinerators (HMIWIs) located within the boundaries of the state of Maine. EPA publishes regulations under Sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (*e.g.*, HMIWIs). The state of Maine submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on October 18, 2005 without further notice unless EPA receives significant adverse comment by September 19, 2005. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0005 by one of the following methods:

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

B. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for

receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

C. E-mail: *brown.dan@epa.gov.*

D. Fax: (617) 918–0048.

E. Mail: ''RME ID Number R01-OAR–2005-ME–0005'', Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

F. Hand Delivery or Courier. Deliver your comments to: Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0005. 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://docket.epa.gov/rmepub/,* 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 Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov website are ''anonymous access'' systems, 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 RME or 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 Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/.* 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 RME or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below to schedule your review. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: John J. Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, telephone number (617) 918–1659, fax number (617) 918–0659, email *courcier.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

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IV. When Did Maine Submit Its Negative Declaration?
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking Today?

EPA is approving the negative declaration of air emissions from HMIWI units submitted by the state of Maine.

EPA is publishing this negative declaration without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this negative declaration should relevant adverse comments be filed. If EPA receives no significant adverse comment by September 19, 2005, this action will be effective October 18, 2005.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective October 18, 2005.

II. What Is the Origin of the Requirements?

Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, Subpart B which require states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

III. When Did the Requirements First Become Known?

On June 20, 1996 (61 FR 31736), EPA proposed emission guidelines for HMIWI units. This action enabled EPA to list HMIWI units as designated facilities. EPA specified particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins/furans as designated pollutants by proposing emission guidelines for existing HMIWI units. These guidelines were published in final form on September 15, 1997 (62 FR 48348).

IV. When Did Maine Submit Its Negative Declaration?

On May 2, 2005, the Maine Department of Environmental Protection (DEP) submitted a letter certifying that there are no existing HMIWI units subject to 40 CFR part 60, subpart B. Section 111(d) and 40 CFR 62.06 provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of ''negative declaration'' instead of a control plan. EPA is publishing this negative declaration at 40 CFR 62.4985.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves 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 rule also does not have tribal implications because it will 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). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing section 111(d) submissions, EPA's role is to approve state plans, 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 state plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan submission, to use VCS in place of a state plan submission that otherwise satisfies the provisions of the Clean Air Act. 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 18, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: August 11, 2005.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

Identification of Action: Approval and Promulgation of Maine State Plan for Hospital/Medical/Infectious Waste Incinerators; Negative Declaration

■ 40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

Subpart U—Maine

■ 2. Subpart U is amended by adding a new § 62.4985 and a new undesignated center heading to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

§ 62.4985 Identification of Plan-negative declaration.

On May 2, 2005, the Maine Department of Environmental Protection submitted a letter certifying that there are no existing hospital/medical/infectious waste incinerators in the state subject to the emission guidelines under part 60, subpart Ce of this chapter.

[FR Doc. 05–16484 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 70, No. 160
Friday, August 19, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21935; Directorate Identifier 2005–CE–37–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Corporation Ltd. Model 750XL Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Pacific Aerospace Corporation Ltd Model 750XL airplanes. This proposed AD would require you to inspect the condition of the left and right outer panel attachment lugs for damage (scoring and gouging) and/or cracks (using a fluorescent penetrant inspection procedure for the crack inspection); to inspect the spacing of left and right outer panel attachment lugs; to replace the lugs if damage is found; and to make necessary corrections to the spacing. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for New Zealand. We are issuing this proposed AD to prevent structural failure of the outer panel and spar due to cracked, bent, or distorted condition of the left and right outer panel attachment lugs; and incorrect spacing of the left and right outer panel attachment lugs. This failure could lead to loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by October 5, 2005.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide Rulemaking Web Site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* 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.

To get the service information identified in this proposed AD, contact Pacific Aerospace Corporation Ltd., Hamilton Airport, Private Bag HN 3027, Hamilton, New Zealand; telephone: (64) 7–843–6144; facsimile: (64) 7–843–6134.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2005–21935; Directorate Identifier 2005–CE–37–AD.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2005–21935; Directorate Identifier 2005–CE–37–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–21935; Directorate Identifier 2005–CE–37–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for New Zealand, recently notified FAA that an unsafe condition may exist on certain Pacific Aerospace Corporation Ltd Model 750XL airplanes. The CAA reports the attachment lug spacers are incorrectly sized and cause the lugs to distort when the attachment bolt is tightened. Also, outer wing attachment lugs were used to secure the spar in the wing build jig without spacers. This may have bent the clevis legs outward. These two problems may cause cracking and/or degradation of fatigue life.

What is the potential impact if FAA took no action? Cracked, bent, or distorted condition of the left and right outer panel attachment lugs; and incorrect spacing of the left and right outer panel attachment lugs could result

in structural failure. This failure could lead to loss of control of the airplane.

Is there service information that applies to this subject? Pacific Aerospace Corporation Ltd. has issued Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting both the right and left paired center wing lugs for scoring or gouging of mating faces, and replacing the lugs if scoring or gouging is found;
—Inspecting both the right and left single outer wing lugs for scoring or gouging, and replacing the lugs if scoring or gouging is found;
—Inspecting both the right and left paired and single outer wing lugs for cracking, and replacing the lugs if cracking is found; and
—Inspecting both the right and left paired center wing lugs for parallel spacing, and correcting the spacing if not parallel within 0.010 inches.

What action did the CAA of New Zealand take? The CAA classified this service bulletin as mandatory and issued New Zealand AD Number DCA/750XL/5, dated April 28, 2005, to ensure the continued airworthiness of these airplanes in New Zealand.

Did the CAA of New Zealand inform the United States under the bilateral airworthiness agreement? These Pacific Aerospace Corporation Ltd Model 750XL airplanes are manufactured in New Zealand and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the CAA of New Zealand has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the CAA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Pacific Aerospace Corporation Ltd Model 750XL airplanes of the same type design that are registered in the United States, we are proposing AD action to prevent structural failure of the outer panel and spar due to cracked, bent, or distorted condition of the left and right outer panel attachment lugs; and incorrect spacing of the left and right outer panel attachment lugs. This failure could lead to loss of control of the airplane.

What would this proposed AD require? This proposed AD would require you to inspect the condition and spacing of the left and right outer panel attachment lugs; replace the lugs if damage is found; and make any necessary corrections to the spacing.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 4 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do this proposed inspection:

Labor cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $65 = $390	$390	$1,560

We estimate the following costs to do any necessary replacements that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
16 workhours × $65 = $1,040	Pacific Aerospace Corporation Ltd. will provide warranty credit for replacement cost.	$1,040

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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 AD.

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

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

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

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

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2005–21935; Directorate Identifier 2005–CE–37–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pacific Aerospace Corporation Ltd.: Docket No. FAA–2005–21935; Directorate Identifier 2005–CE–37–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by October 5, 2005.

What Other ADs Are Affected By This Action?

(b) None.

What Airplanes Are Affected By This AD?

(c) This AD affects Model 750XL, serial numbers 101 through 115, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of incorrect sizing of the attachment lug spacers causing the lugs to distort when the attachment bolt is tightened. Also, outer wing attachment lugs were used to secure the spar in the wing build jig without spacers. This may have bent the clevis legs outward. These two problems may cause cracking and/or degradation of fatigue life. The actions specified in this AD are intended to prevent structural failure of the outer panel and spar due to cracked, bent, or distorted condition of the left and right outer panel attachment lugs; and incorrect spacing of the left and right outer panel attachment lugs. This failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the left and right outer panel, paired center wing lugs, and the outer panel single lugs for damage (scoring or gouging).	Upon accumulating 300 hours time-in-service (TIS) or within 50 hours TIS after the effective date of this AD, whichever occurs later.	Follow Pacific Aerospace Corporation Ltd. Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005.
(2) Inspect the left and right outer panel, paired center wing lugs, and the outer panel single lugs for cracks. You must use a fluorescent penetrant inspection procedure instead of the dye penetrant inspection procedure stated in the service information.	Upon accumulating 300 hours TIS or within 50 hours TIS after the effective date of this AD, whichever occurs later.	Pacific Aerospace Corporation Ltd. Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005.
(3) If any damage and/or cracks are found during the inspections required in paragraph (e)(1) and (e)(2) of this AD, you must replace the lugs.	Prior to further flight, after any inspection where damage and/or cracks are found.	Pacific Aerospace Corporation Ltd. Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005.
(4) Inspect the left and right wing paired lugs for parallel spacing within 0.010 inches. If the paired lugs are not parallel within 0.010 inches, reshim outer wing attachment points and correct spacing.	Inspect upon accumulating 300 hours TIS or within 50 hours TIS after the effective date of this AD, whichever occurs later. Correct spacing and reshim prior to further flight after the inspection.	Pacific Aerospace Corporation Ltd. Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) CAA Airworthiness Directive DCA/750XL/5, dated April 28, 2005; and Pacific Aerospace Corporation Ltd. Mandatory Service Bulletin PACSB/XL/015, Issue 3, amended April 8, 2005 also address the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact Pacific Aerospace Corporation Ltd., Hamilton Airport, Private Bag HN 3027, Hamilton, New Zealand; telephone: (64) 7–843–6144; facsimile: (64) 7–843–6134. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–21935; Directorate Identifier 2005–CE–37–AD.

Issued in Kansas City, Missouri, on August 15, 2005.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16442 Filed 8–18–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22124; Directorate Identifier 2005–NE–21–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45A, CF6–50A, CF6–50C, and CF6–50E Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for General Electric Company (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines. This proposed AD would require removing from service pre-GE Service Bulletin (SB) No. CF6–50 S/B 72–1268 configuration low pressure turbine (LPT) stage 2 interstage seal assemblies and stage 3 interstage seal assemblies. The proposed AD would also require installing new or reworked configuration stage 2 interstage seal assemblies and stage 3 interstage seal assemblies. This proposed AD results from reports of fan mid shaft separation, leading to separation of the LPT stage 1 disk, disk overspeed, and uncontained engine failure. We are proposing this AD to prevent uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by October 18, 2005.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: 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.

Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422, for the service information identified in this proposed AD.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–22124; Directorate Identifier 2005–NE–21–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the DMS Docket Office 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.

Discussion

Since 1975, there have been 13 reports of fan mid shaft separation in GE CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines. Two of these separations resulted in disk separation and uncontained engine failure. Another of these separations resulted in partial cut-through of the stage 1 disk spacer arm. On December 3, 1998, the National Transportation Safety Board issued Safety Recommendation No. A–98–125, to require GE to modify the engines to eliminate the cause of these uncontained engine failures. GE performed an extensive investigation which revealed that when a fan mid shaft separates, early contact and heavy rubbing of the stage 2 interstage seal assembly and stage 3 interstage seal assembly occurs with the stage 1 disk spacer arms. This heavy rubbing leads to separation of the LPT stage 1 disk, disk overspeed, and uncontained engine failure. The axial length of the current configuration seals, and their honeycomb density are the cause for the early contact and heavy rubbing. When a fan mid shaft separates, the intended failure sequence is for the LPT blade airfoils to be fragmented by contact with the LPT nozzles, causing the LPT rotor to decelerate, preventing uncontained engine failure. This condition, if not corrected, could result in uncontained engine failure and damage to the airplane. As corrective action, GE has introduced a redesigned stage 2 interstage seal assembly configuration and a redesigned stage 3 interstage seal assembly configuration that have a reduced axial length and a lower density honeycomb.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require:

- Removal from service of the pre-SB No. CF6–50 S/B 72–1268 configuration LPT stage 2 interstage seal assembly.
- Installation of a new or reworked configuration LPT stage 2 interstage seal assembly, part number (P/N) 9198M81G05, 2092M13G01, 2092M13G02, or 2092M13G03, or other FAA-approved equivalent part.
- Removal from service of the pre-SB No. CF6–50 S/B 72–1268 configuration stage 3 interstage seal assembly.

• Installation of a new or reworked configuration stage 3 interstage seal assembly, P/N 9044M29G17 or 2092M14G01, or other FAA-approved equivalent part.

These actions would be required at the next disassembly of the LPT stage 2 interstage seal assembly and stage 3 interstage seal assembly from the LPT stator after the effective date of the proposed AD, but no later than December 31, 2010.

Costs of Compliance

There are about 2,079 CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines of the affected design in the worldwide fleet. We estimate that 790 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take about 5 work hours per engine to rework the stage 2 interstage seal assembly and the stage 3 interstage seal assembly. The average labor rate is $65 per work hour. We estimate that 90% of the affected engines will have the parts reworked, and 10% will have new parts installed. A new stage 2 interstage seal assembly and new stage 3 interstage seal assembly would cost about $26,758 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $2,344,957.

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2005–22124; Directorate Identifier 2005–NE–21–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by October 18, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines. These engines are installed on, but not limited to, Boeing DC10 and 747 series airplanes, and Airbus Industrie A300 series airplanes.

Unsafe Condition

(d) This AD results from reports of fan mid shaft separation, leading to separation of the LPT stage 1 disk, disk overspeed, and uncontained engine failure. We are issuing this AD to prevent uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next disassembly of the low pressure turbine (LPT) stage 2 interstage seal assembly and stage 3 interstage seal assembly from the LPT stator after the effective date of this AD, but no later than December 31, 2010, unless the actions have already been done.

Stage 2 Interstage Seal Assemblies

(f) Remove from service the pre-GE Service Bulletin (SB) No. CF6–50 72–1268 configuration LPT stage 2 interstage seal assembly.

(g) Install a new or reworked configuration LPT stage 2 interstage seal assembly, part number (P/N) 9198M81G05, 2092M13G01, 2092M13G02, or 2092M13G03, or other FAA-approved equivalent part.

(h) Information on reworking the pre-SB No. CF6–50 S/B 72–1268 configuration stage 2 interstage seal assembly to the new configuration can be found in GE SB No. CF6–50 S/B 72–1268, dated December 16, 2004.

Stage 3 Interstage Seal Assemblies

(i) Remove from service the pre-SB No. CF6–50 S/B 72–1268 configuration stage 3 interstage seal assembly.

(j) Install a new or reworked configuration LPT stage 3 interstage seal assembly, P/N 9044M29G17 or 2092M14G01, or other FAA-approved equivalent part.

(k) Information on reworking the pre-SB No. CF6–50 S/B 72–1268 configuration stage 3 interstage seal assembly to the new configuration can be found in GE SB No. CF6–50 S/B 72–1268, dated December 16, 2004.

Prohibition of Pre-SB No. CF6–50 S/B 72–1268 Configurations

(l) After the effective date of this AD, do not install pre-SB No. CF6–50 S/B 72–1268 configuration LPT stage 2 interstage seal assemblies or stage 3 interstage seal assemblies into any engine.

Alternative Methods of Compliance

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

Related Information

(n) National Transportation Safety Board Safety Recommendation No. A–98–125, dated December 3, 1998, pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on August 12, 2005.

Peter A. White,

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

[FR Doc. 05–16452 Filed 8–18–05; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R01–OAR–2005–ME–0005; FRL–7956–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Maine; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the sections 111(d) and 129 negative declaration submitted by the Maine Department of Environmental Protection (MEDEP) on May 2, 2005. This negative declaration adequately certifies that there are no existing hospital/medical/infectious waste incinerators (HMIWIs) located within the boundaries of the state of Maine.

DATES: EPA must receive comments in writing by September 19, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–ME–0005 by one of the following methods:

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

2. Agency Web site: *http://docket.epa.gov/rmepub/*. Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *brown.dan@epa.gov*.

4. Fax: (617) 918–0048.

5. Mail: ''RME ID Number R01–OAR–2005–ME–0005'', Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

Maine Department of Environmental Protection, Bureau of Air Quality, 17 State House Station, Augusta, Maine 04333–0017, (207) 287–2437.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, telephone number (617) 918–1659, fax number (617) 918–0659, email *courcier.john@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the Maine Negative Declaration submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: August 11, 2005.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 05–16483 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 70, No. 160

Friday, August 19, 2005

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 15, 2005.

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.

Food and Nutrition Service

Title: Waivers Under Section 6(o) of the Food Stamp Act

OMB Control Number: 0584–0479.

Summary of Collection: Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193 (PRWORA) establishes a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waiver the provision for any group of individuals if the Secretary determines ''that the areas in which the individuals reside has an unemployment rate of over 10 percent or does not have a sufficient number of jobs to provide employment for the individuals.''

Need and Use of the Information: The Food and Nutrition Service use the information provided by State food stamp agencies to evaluate whether the statutory requirements for a waiver of the food stamp time limit have been met and to determine specifically whether the designated areas' unemployment rate is over ten percent or if there is a lack of sufficient jobs available. If the information is not collected, the State Food Stamp agencies could not obtain waivers of time limits contained in Section 6(o) of the Act.

Description of Respondents: State, local, or tribal government; Individuals or household.

Number of Respondents: 45.

Frequency of Responses: Reporting: On occasion, Annually.

Total Burden Hours: 960.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–16421 Filed 8–18–05; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC12

Grazing Permit Administration Handbook (FSH 2209.13), Chapters 10 (Term Grazing Permits) and 20 (Grazing Agreements)

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice; request for comment.

SUMMARY: On July 19, 2005, the Forest Service published a notice in the **Federal Register** with request for comment on the issuance of two interim directives (IDs) to Forest Service Handbook (FSH) 2209.13, chapter 10—Term Grazing Permits and chapter 20—Grazing Agreements. These IDs established procedures and responsibilities for administering term grazing permits and grazing agreements (FR 70 41370). On that same day, several other amendments to FSH 2209.13, as well as amendments to several chapters of Forest Service Manual (FSM) 2200 on Range Management were issued. The Forest Service has decided to rescind the IDs and reissue revised IDs. In addition, the Forest Service has prepared proposed directives containing the direction removed from the above mentioned IDs. Public comment is invited and will be considered in development of the final directives. Public comments received on the earlier ID's will also be considered.

DATES: Interim Directive no. 2209.13–2005–4 (Chapter 10); and Interim Directive no. 2209.13–2005–5 (Chapter 20) were effective August 16, 2005. Comments on the interim directives and the proposed directives must be received in writing by December 19, 2005.

ADDRESSES: Interim Directive no. 2209.13–2005–4 (Chapter 10); and Interim Directive no. 2209.13–2005–5 (Chapter 20) are available on the World Wide Web/Internet at *http://www/fs/fed/us/im/directives.* The proposed directives can be found on the Forest Service's Rangeland Management Web site at *http://www/fs/fed/us/rangelands.* Paper copies can be requested by writing to the USDA Forest Service, Attn: Director, Rangeland Management Staff, Mail Stop 1103, 1400 Independence Ave., SW., Washington,

DC 20250–1153. Also send written comments by mail to that same address; by electronic mail to *RgeID@fs.fed.us*; or by facsimile to (202) 205–1096. If comments are sent by electronic means or by facsimile, the public is requested not to send duplicate comments via regular mail.

All comments, including names and addresses when provided, are placed in the record and available for public inspection and copying. The agency cannot confirm receipt of comments.

The public may inspect comments received on these proposed directives in the Rangeland Management Staff, 3rd Floor, South Wing, Yates Building, 14th and Independence Avenues, Southwest, Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead to (202) 205–1460 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Ralph Giffen, Rangeland Management Staff, USDA Forest Service, (202) 205–1455.

SUPPLEMENTARY INFORMATION: The last substantive amendments to the Forest Service Manual (FSM 2200) for Rangeland Management and Grazing Permit Administration Handbook (FSH 2209.13) were made in 1985. Clarifications and adjustments in policy are necessary to respond to changing needs of both the Forest Service and the livestock industry. Therefore, the Forest Service issued directive amendments to 14 chapters and interim directives to 2 chapters in FSM 2200 and FSH 2209.13 to ensure the agency is both current and consistent in working with grazing permittees in all Forest Service regions. The Office of Management and Budget (OMB) determined that none of changes in the chapters were significant. The Range Management regulations at 36 CFR part 222 were not changed.

Regulatory Certifications

Regulatory Impact

This notice has been reviewed under USDA procedures and Executive Order (E.O.) 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that it is substantive, nonsignificant. The directives would not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. The directives would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, the directives would not alter the budgetary impact on entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, the directives have been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No direct or indirect financial impact on small businesses or other entities has been identified. Therefore, it is hereby certified that these directives will not have a significant economic impact on a substantial number of small entities as defined by this act.

Environmental Impact

These directives provide detailed direction to agency employees necessary to administer term grazing permits and grazing agreements. Section 31.12 of Forest Service Handbook 1909.15 (57 FR 43208; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's conclusion is that these directives fall within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or an environmental impact statement.

No Takings Implications

These directives have been analyzed in accordance with the principles and criteria contained in Executive Order 12360, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that they would not pose the risk of a taking of private property as they are limited to the establishment of administrative procedures.

Energy Effects

These directives have been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that they do not constitute a significant energy action as defined in the Executive order.

Civil Justice Reform

These directives have been reviewed under Executive Order 12988, Civil Justice Reform. These directives will direct the work of Forest Service employees and are not intended to preempt any State and local laws and regulations that might be in conflict or that would impede full implementation of these directives. The directives would not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands and would not require the institution of administrative proceedings before parties may file suit in court challenging their provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the effects of these directives on State, local, and tribal governments, and on the private sector have been assessed and do not compel the expenditure of $100 million or more by any State, local, or Tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism

The agency has considered these directives under the requirements of Executive Order 13132, Federalism. The agency has made a preliminary assessment that the directives conform with the federalism principles set out in this Executive order; would not impose any significant compliance costs on the States; and would 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. Moreover, these directives address term grazing permits and grazing agreements on national forests and grasslands, which do not directly affect the States. Based on comments received on these directives, the agency will consider if any additional consultation will be needed with State and local governments prior to adopting final directives.

Consultation and Coordination With Indian Tribal Governments

These directives do not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore, advance consultation with Tribes is not required.

Controlling Paperwork Burdens on the Public

These directives do not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, impose no paperwork burden on the public.

Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Conclusion

The Forest Service is committed to providing adequate opportunities for the public to comment on administrative directives that are of substantial public interest or controversy, as provided in the regulations at 36 CFR part 216. Because it is important to provide Forest Service units with updated guidance and direction in a comprehensive integrated package, the agency issued the ID's on August 16, 2005, making them effective immediately. However, pursuant to 36 CFR 216.7, the Forest Service is also requesting public comment on the ID's along with the proposed directives.

All comments will be considered in the development of final directives.

Paper copies are available upon request from the address and phone numbers listed in the **ADDRESSES** section of this notice, as well as from the nearest Regional Office, the location of which are also available on the Washington Office headquarters home page on the World Wide Web at *http://www.fs.fed.us.*

Dated: August 16, 2005.

Sally D. Collins,

Associate Chief of the Forest Service.

[FR Doc. 05–16493 Filed 8–18–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Stocks Reports.

DATES: Comments on this notice must be received by October 18, 2005 to be assured of consideration.

ADDRESSES: Comments may be sent to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024 or to *gmcbride@nass.usda.gov* or faxed to (202) 720–6396.

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Stocks Reports.

OMB Control Number: 0535–0007.

Expiration Date of Approval: February 28, 2006.

Type of Request: Intent to seek approval to revise and extend an information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, stocks, disposition, and prices. The Stocks Report Surveys provide estimates of stocks of grains, hops, oilseeds, peanuts, potatoes, and rice that are stored off-farm. These off-farm stocks are combined with on-farm stocks to estimate stocks in all positions. Stocks statistics are used by the U.S. Department of Agriculture to help administer programs; by State agencies to develop, research, and promote the marketing of products; and by producers to find their best market opportunity. NASS intends to request that the survey be approved for another 3 years.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: This information collection comprises 15 individual surveys that are conducted 1, 2, 3, 4, 7, or 12 times a year for an estimated total of 50,000 responses. Public reporting burden for this collection of information is estimated to average 18 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 13,000.

Estimated Total Annual Burden on Respondents: 15,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, July 29, 2005.

Carol House,

Associate Administrator.

[FR Doc. 05–16463 Filed 8–18–05; 8:45 am]

BILLING CODE 3410–20–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Redesignation of Services

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Redesignation of Procurement List services.

SUMMARY: This notice redesignates services on the Procurement List which will be procured on a Basewide basis rather than for individual buildings. These services are being performed for the Department of the Air Force, Kirtland Air Force Base, New Mexico.

DATES: Effective August 19, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 2202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: The following services are on the Procurement List to be performed by the designated nonprofit agencies for the Department of the Air Force, Kirtland Air Force Base, New Mexico as identified below:

From: Service Type/Location: Janitorial/Custodial,
Buildings 333, 404, 499, 589, 20107, 20160, 20203, 21851, and 21852;

Building 1029; Air Force Inspection and Safety Agency,
Building 24499;
Building 1028;
Buildings 433–437, 952–954, 956, 975, 980, 20140, 20202C, 20204, 20350, 20602C, 20604, 20684, 20685, and 20686;
Buildings 243, 255, 277, 322, 325, 336, 382, 400–402, 405, 410, 412–419, 422–424, 430, 485, 497, 591–593, 887, 891, 902, 909, 911, 912, 914, R10, and R20;
Building 426;
Buildings 595 and 472;
Buildings 1017, 1018, 1019, 1020, 37506, 37507, and 37508;
Buildings 201, 381, 460, 467, 482, 585, 605, 617, 618, 619, 702, 760, 760–3, 762, 763, 765, 916, 926, 945, 996, 1010, 1013, 1015, 1025, 1032, 1037, 1048, 1049,7906, 20216, 20219, 20220, 20226, 20234, 20360—20364, 20369, 20724, 20749, 20752, 20754, 22004, 27494, 30117, 30134, and 30136;
Buildings 1000, 1001, 1002, 20129, 20130, 20168, 20200, 20201, 20206, 20227, 20228, 20375, 20405, 20410, 20412, 20414, 20420, 20449, 20451, 20600, 20673, 20674, 20675, 20676, 20678—20683, 20687, 20707, 48025, 57001, 27011, 66001, 66006, 66014, 66017, 66029, 66041, 66047, 66049, 66071, 20202D, 20451A–J, and 20602ABD;
Kirtland Air Force Base, New Mexico.

The above services will be procured by the 377th CONS/LGCA, Kirtland Air Force Base, New Mexico on a Basewide basis and are thus being redesignated collectively on the Procurement List as set forth below, and the nonprofit agencies identified below have been designated as the qualified nonprofit agencies authorized to provide the services.

To: Service Type/Location: Janitorial/Custodial, Basewide, Kirtland Air Force Base, New Mexico.
NPA: RCI, Inc. (Acting as Prime Contractor), Albuquerque, New Mexico; Adelante Development Center, Inc., Albuquerque, New Mexico.
Contract Activity: 377th CONS/LGCA, Kirtland Air Force Base, New Mexico.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. E5–4543 Filed 8–18–05; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Effective date: September 18, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: On May 20, and June 24, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 29274, and 36561) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Document Destruction, Department of Agriculture, Farm Service Agency, 6501 Beacon Drive, Kansas City, Missouri.
NPA: Independence and Blue Springs Industries, Inc., Independence, Missouri.
Contracting Activity: Department of Agriculture, Farm Service Agency, Kansas City, Missouri.
Service Type/Location: Document Destruction—At the following Internal Revenue Service Locations: 3849 N. Richardt Avenue, Indianapolis, Indiana; 575 N. Pennsylvania Street, Indianapolis, Indiana; 7 East Ohio Street, Room 442, Indianapolis, IN.
NPA: Shares Inc., Shelbyville, Indiana.
Contracting Activity: U.S. Treasury, IRS, Chamblee, Georgia.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. E5–4544 Filed 8–18–05; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: September 18, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting,

recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Accustamp (for GSA Global Supply only),
NSN: 7520–01–207–4108—COPY—Red.
NSN: 7520–01–207–4116—DRAFT—Red.
NSN: 7520–01–207–4226—RECEIVED—Blue.
NSN: 7520–01–207–4119—SECRET—Red.
NSN: 7520–00–264–3718—Rubber Stamp Printing Set.
NSN: 7520–01–207–4111—COMPLETED—Red.
NSN: 7520–01–324–6955—COMPLETED—Blue.
NSN: 7520–01–419–5949—CONFIDENTIAL—Red.
Product/NSN: Custom Stamp (for GSA Global Supply only),
NSN: 7510–00–386–2444—Custom Stamps.
Product/NSN: Stamp 2000 Plus (for GSA Global Supply only),
NSN: 7520–01–352–3019—Black.
NSN: 7520–01–352–3018—Red.
Product/NSN: Stamp Pad Ink (for GSA Global Supply only),
NSN: 7510–00–782–6257—Black 8 oz.
NSN: 7510–00–161–4240—Red 2 oz/roll-on.
NSN: 7510–01–316–7516—Black 2 oz/roll-on.
NSN: 7510–00–161–4237—Black 2 oz/roll-on.
NPA: The Arbor School, Houston, Texas.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–4545 Filed 8–18–05; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, August 26, 2005, 9:30 a.m., Continuation of Friday, July 22, 2005, Commission Meeting.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425. The meeting is also accessible to the public through the following: Call-In Number: 1–800–597–0731. Access Code Number: 43783773. Federal Relay Service: 1–800–877–8339.

STATUS:

Agenda *

I. Approval of Agenda
II. Approval of Minutes of June 17, 2005 Meeting
III. Announcements
IV. Program Planning
- Adarand Report
- Federal Funding of Civil Rights Report

V. Staff Director's Report
VI. Management and Operations
- Fiscal Year 2005 Financial Corrective Measures
- Fiscal Year 2007 Budget

VII. State Advisory Committees Issues
- State Advisory Committee Reports
- State Advisory Committee Rechartering

VIII. Discussion of Future Briefing
IX. Future Agenda Items

* This order of items on this Agenda reflects a motion made during the first portion of the meeting held on July 22, 2005, modifying the original Agenda published in the **Federal Register** on page 40980, July 15, 2005.

CONTACT PERSON FOR FURTHER INFORMATION: Terri Dickerson, Press and Communications (202) 376–8582.

Kenneth L. Marcus,

Staff Director, Acting General Counsel.

[FR Doc. 05–16514 Filed 8–16–05; 4:24 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–899

Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Artist Canvas from the People's Republic of China

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

EFFECTIVE DATE: August 19, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Holton or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1324 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On April 28, 2005, the Department of Commerce (''Department'') published the initiation of the antidumping duty investigation of imports of certain artist canvas from the People's Republic of China. *See Initiation of Antidumping Duty Investigation: Certain Artist Canvas from the People's Republic of China*, 70 FR 21996 (April 28, 2005). The notice of initiation stated that we would make our preliminary determination for this antidumping duty investigation no later than 140 days after the date of issuance of the initiation. Currently, the preliminary determination in this investigation is due September 8, 2005.

On August 11, 2005, Tara Materials Inc. (''Petitioner'') made a timely request pursuant to 19 CFR §351.205(e) for a 29-day postponement of the preliminary determination, or until October 7, 2005. Petitioner requested postponement of the preliminary determination because it believes additional time is necessary to allow Petitioner to review the responses to the supplemental questionnaires and submit comments to the Department, and also to allow the Department time to analyze thoroughly the respondents' data and to seek additional information, if necessary.

Under section 733(c)(1)(A) of the Tariff Act of 1930, as amended (''the Act''), if Petitioner makes a timely request for a postponement of the preliminary determination, the Department may postpone the preliminary determination under subsection (b)(1) until no later than the 190th day after the initiation of the investigation.

Therefore, because there are no compelling reasons to deny Petitioner's request, we are postponing the preliminary determination under section 733(c)(1)(A) of the Act by 29 days to October 7, 2005. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 357.205(f)(i).

Dated: August 15, 2005.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4541 Filed 8–18–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–351–828

Notice of Preliminary Results of the New Shipper Review of the Antidumping Duty Order on Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil

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

SUMMARY: In response to a request by Comphania Siderúrgica de Tubarão (CST), the U.S. Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on certain hot–rolled flat–rolled carbon quality steel products (hot–rolled steel products) from Brazil for the period March 1, 2004, through August 31, 2004. We preliminarily determine that during the period of review (POR), CST did not sell subject merchandise at less than normal value (NV). Moreover, we have preliminarily determined that CST's U.S. sales are *bona fide* transactions. Our full analysis is set forth in the Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil: New Shipper Review of Companhia Siderúrgica de Tubarão (CST), dated August 12, 2005 (*Bona Fide* Memo), which is on file in the Central Records Unit (CRU), room B–099 of the main Commerce Building. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in the final results of this new shipper review, we will issue instructions to U.S. Customs and Border Protection (CBP) as described in the ''Assessment Rates'' section below.

EFFECTIVE DATE: August 19, 2005.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or David Kurt Kraus, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3019 or (202) 482–7871, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 2002, the Department published in the **Federal Register** the antidumping duty order on hot–rolled steel products from Brazil. *See Notice of Antidumping Duty Order and of Sales at Less Than Fair Value: Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil*, 67 FR 11093 (*AD Order*). On September 27, 2004, we received a request from CST to initiate a new shipper review of CST's U.S. sales of hot–rolled steel products from Brazil. On October 28, 2004, the Department published the notice of initiation of this new shipper antidumping duty review covering the period March 1, 2004, through August 31, 2004. *See Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil: Notice of Initiation of New Shipper Antidumping Duty Review*, 69 FR 62866 (October 28, 2004).

On November 12, 2004, we sent a questionnaire to CST and instructed CST to respond to Sections A–C. On December 3, 2004, CST submitted its response to Section A of the original questionnaire. On January 3, 2005, CST filed a letter stipulating that it would not be submitting a Section E response to the Department's antidumping duty questionnaire as such response is not required or warranted. On January 12, 2005, CST submitted its response to Sections B and C of the questionnaire.

On February 2, 2005 the Department received a sales below–cost allegation from Nucor Corporation, a petitioner in this review. On February 14, 2005, CST responded to this allegation of sales below–cost. The Department issued the first supplemental Sections A–C questionnaire on February 24, 2005. After determining that Nucor Corporation provided a reasonable basis for a sales–below cost allegation, the Department initiated a sale–below cost investigation and issued a modified Section D questionnaire to CST on March 9, 2005. *See* Memorandum to Richard O. Weible, Director, Office 7, ''Petitioner's Allegation of Sales Below the Cost of Production for Companhia Siderúrgica de Tubarão,'' dated March 9, 2005 (Sales Below COP Memo).

The Department issued its first supplemental Sections A–C questionnaire on February 24, 2005. On March 10, 2005, we received CST's response to the first supplemental questionnaire (Sections A–C). On March 23, 2005, the Department received CST's response to Section D of the questionnaire. On April 1, 2005, the Department issued its second supplemental questionnaire. We received CST's second supplemental questionnaire response on April 13, 2005. On April 20, 2005, we issued a supplemental Section D questionnaire to CST. We received CST's supplemental Section D questionnaire response on May 6, 2005, which included revised cost, home market and U.S. sales databases.

On June 6, 2005 and June 9, 2005, we issued our sales and cost verification agendas to CST. We conducted verification of CST's sales information from June 13, 2005, through January 17, 2005. We conducted verification of CST's cost information from June 20, 2005, through June 24, 2005. *See* Memorandum to the File, through Abdelali Elouaradia, ''Verification of Home Market and U.S. Sales Questionnaire Responses Submitted by Companhia Siderúrgica de Tubarão (CST),'' dated July 7, 2005 (Sales Verification Report) and Memorandum to Neal M. Halper through Peter Scholl, ''Verification Report on the Cost of Production and Constructed Value Data Submitted by Companhia Siderúrgica de Tubarão (CST),'' dated August 11, 2005 (Cost Verification Report). Public versions of both verification reports are on file with the CRU. On July 14, 2005, we requested that CST submit revised home market and U.S. sales databases to reflect minor corrections presented and findings discovered at verification and accepted by the Department. The Department received CST's response on July 20, 2005.

Period of Review

The POR for this new shipper review is March 1, 2004, through August 31, 2004.

Scope of the Order

For purposes of this order, the products covered are certain hot–rolled flat–rolled carbon–quality steel products, meeting the physical parameters described below, regardless of application.

The hot–rolled flat–rolled carbon–quality steel products subject to this review are of a rectangular shape, of a width of 0.5 inch of greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics of other non–metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Specifically included in this scope are vacuum degassed, fully stabilized (IF) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. Steel products to be included in

the scope of this agreement, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent of less, by weight; and (3) none of the elements listed below exceeds certain specified quantities.

The merchandise subject to the order is currently classifiable under subheadings 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Certain hot–rolled flat–rolled carbon–quality steel covered by this agreement, including vacuum degassed and fully stabilized, high strength low alloy, and the substrate for motor lamination steel may also enter under tariff numbers 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we conducted verification of the sales and cost information provided by CST. We used standard verification procedures, including examination of relevant sales, financial, and cost records. *See* Sales Verification Report and Cost Verification Report. Our verification results are detailed in the verification reports placed in the case file in the CRU. We made certain minor revisions to certain sales and cost data based on verification findings

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the ''Scope of the Order'' section above, which were produced and sold by CST in the home market during the POR, to be foreign like product for the purpose of determining appropriate product comparisons to CST's U.S. sales of hot–rolled steel products.

We relied on the following eleven product characteristics to match U.S. sales of subject merchandise to sales in Brazil of the foreign like product (listed in order of preference): painted or not–painted, quality, carbon content, yield strength, nominal thickness, width, form of merchandise, *i.e.*, cut–to-length or coil, temper rolled or skin passed, pickled or not pickled, edge trimmed, *i.e.*, trimmed or mill–edged, and with patterns in relief or without patterns in relief. In instances where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. *See* Appendix V of the Department's antidumping duty questionnaire to CST dated November 12, 2004.

Fair Value Comparisons

To determine whether CST made sales of hot–rolled steel products to the United States at less than fair value, we compared the export price (EP) to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to monthly weighted–average NVs.

Export Price

Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act.

In the instant review, CST sold subject merchandise to the United States through its wholly–owned subsidiary, CST Overseas Ltd., located in Georgetown, Grand Cayman Islands, and this Cayman Islands–based trading company sold the subject merchandise to the first unaffiliated U.S. customer. CST reported all of its U.S. sales of subject merchandise as EP transactions. After reviewing the evidence on the record of this review, we have preliminarily determined that CST's transactions are classified properly as EP sales because these sales were first sold before the date of importation by CST's subsidiary, CST Overseas Ltd., to an unaffiliated purchaser in the United States.

Such a determination is consistent with section 772(a) of the Act and the U.S. Court of Appeals for the Federal Circuit's (Court of Appeals') decision in *AK Steel Corp. et al. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000) (*AK Steel*). In *AK Steel*, the Court of Appeals examined the definitions of EP and constructed export price (CEP), noting ''the plain meaning of the language enacted by Congress in 1994, focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making these two factors dispositive of the choice between the two classifications.'' *AK Steel*, at 226 F.3d at 1369. The Court of Appeals declared, ''the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate,'' and noted that the phrase ''outside the United States'' had been added to the 1994 statutory definition of EP. *AK Steel*, at 226 F.3d at 1368–70. Thus, the classification of a sale as either EP or CEP depends upon where the contract for sale was concluded (*i.e.*, in or outside the United States) and whether the foreign producer or exporter is affiliated with the U.S. importer. In this case, the exporter is not affiliated and the sale took place outside of the U.S.

For these EP sales transactions, we calculated price in conformity with section 772(a) of the Act. We based EP on the packed, delivered duty–paid prices to an unaffiliated purchaser in the United States. We also made deductions from the EP starting price, where appropriate, for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight from the plant/warehouse to the port of exportation, foreign brokerage and handling, and international freight. Pursuant to section 772(c)(1)(B), we adjusted the EP starting price for the per unit amount of any import duties imposed by the country of exportation, which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, *i.e.*, duty drawback.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared CST's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Pursuant to section 773(a)(1)(B) of the Act and section 351.404(b) of the Department's regulations, because CST's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determine that sales in the home market provide a viable basis for calculating NV. *See* CST's Section A questionnaire response at Exhibit A–1. Moreover, there is no evidence on the record supporting a particular market situation in the exporting company's country that would not permit a proper comparison of home market and U.S. prices. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

As such, we used as NV the prices at which the foreign like product was first sold for consumption in Brazil, in the usual commercial quantities, in the ordinary course of trade and, to the extent possible, at the same level of trade (LOT) as EP sales, as appropriate.

B. Arm's–Length Test

CST reported that during the POR, it made sales in the home market to affiliated and unaffiliated original equipment manufacturers (OEMs) or end–users and service centers. If any sales to affiliated customers in the home market were not made at arm's–length prices, we excluded them from our analysis as we consider such sales to be outside the ordinary course of trade. *See* 19 CFR § 351.102(b). To test whether sales to affiliates were made at arm's–length prices, we compared, on a model–specific basis, the starting prices of sales to affiliated and unaffiliated customers net of all discounts and rebates, movement expenses, direct selling expenses, and home market packing expenses. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's–length prices. *See* 19 CFR § 351.403(c). Conversely, where the affiliated party did not pass the arm's–length test, all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (*Modification to Affiliated Party Sales*). Because CST's affiliated customers in the home market processed the subject merchandise into non–subject merchandise during the POR, we analyzed only the sales to the affiliates to determine whether they passed the arm's length test. We discovered that certain sales to affiliated purchasers in the home market did not pass the arm's–length test; accordingly, we have excluded all sales to these affiliated parties from the NV calculation.

C. Cost of Production Analysis

In accordance with section 773(b)(2)(A) of the Act, in order to initiate a sales below the cost of production (COP) investigation the Department must have ''reasonable grounds'' to believe or suspect that sales in the home market or a third country, if appropriate, have been made at prices below the COP. An allegation will be deemed to demonstrate reasonable grounds if: 1) a reasonable methodology is used in the calculation of the COP including the use of the respondent's actual data, if available; 2) using this methodology, sales are shown to be made at prices below the COP; and 3) the sales allegedly made at below cost are representative of a broader range of foreign models that may be used as a basis for normal value.

As noted above, the Department found that the petitioner's methodology for evaluating sales at below the cost of production was reasonable. *See* Sales–Below COP Memo dated March 9, 2005. Therefore, the Department initiated a sales below cost or production investigation on the basis that it has reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that CST made sales in the home market at prices below the COP for this POR. As a result, in accordance with section 773(b)(1) of the Act, we examined whether CST's sales in the home market were made at prices below the COP.

1. Calculation of COP

We compared sales of the foreign like product in the home market with POR model–specific COP. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses, interest expenses, and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment. In our sales–below-cost analysis, we relied on home market sales and COP information provided by CST in its questionnaire responses, except where noted below:

1. We increased CST's reported cost of manufacturing by allocating certain unreported manufacturing expenses to hot–rolled coil products.
2. We reduced CST's reported production quantity to reflect the verified quantity.
3. We increased the costs reported for certain third party services to reflect the actual costs paid for the services.
4. We reclassified certain expenses from manufacturing costs to general and administrative expenses.
5. We revised the reported financial expenses by excluding certain financial gains.
6. In accordance with section 773(f)(3) of the Act, we increased the cost of certain major material inputs purchased from an affiliated supplier during the POR.

For further details regarding these adjustments, *see* the Memorandum to Neal M. Halper, Director, Office of Accounting, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results'' (COP Memorandum), dated August 12, 2005.

2. Test of Home Market Prices

We compared CST's weighted–average COPs to its home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product–specific basis, we compared the COP to home market prices net of any applicable indirect taxes which were not included in CST's reported manufacturing costs, *i.e.*, state tax on sales of merchandise and services (ICMS) and federal tax on industrialized products (IPI), and any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in (1) substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

3. Results of the COP Test

Pursuant to section 773(b)(1), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below–cost sales of that product, because we determine that in such instances the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that the below–cost sales represent ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

Our cost test revealed that more than twenty percent of CST's home market sales of certain products were made at below–cost prices during the reporting period and the below–cost sales were made at prices which would not permit recovery of all costs within a reasonable period of time. Therefore, we disregarded those below–cost sales, while retaining the above–cost sales for our analysis.

D. Price-to-Price Comparisons

We based NV on home market prices to unaffiliated and affiliated customers. Home market starting prices were based on packed prices to affiliated or unaffiliated purchasers in the home market. We adjusted gross unit prices for billing adjustments, interest revenue, and Brazilian state and federal taxes (*i.e.*, state tax on sales of merchandise and services (ICMS) and federal tax on industrialized products (IPI), and federal taxes applied to gross invoice values less IPI tax (PIS and COFINS)). We made deductions, where appropriate, for inland freight from the plant to the customer or to the port of exit and domestic brokerage and handling pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and section 351.411 of the Department's regulations. In accordance with section 773(a)(6)(C)(iii) of the Act and section 351.410 of our regulations, we adjusted home market starting prices for differences in circumstances of sale, *i.e.*, imputed credit and warranty expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

For sales to a particular home market customer, CST ships hot–rolled steel products on ocean–going vessels departing from its port, Praia Mole, to the port closest to its customer. During our review of CST's reporting of domestic brokerage and handling expenses related to a pre–selected home market sale to this customer, we discovered discrepancies which were not presented by CST at the outset of verification as minor corrections that call into question CST's reporting of these expenses for all sales to this customer, *i.e.*, double–counting of packing expenses and failure to include additional charges for demurrage. Moreover, CST failed to comply with the verifier's request for documentation to support the total demurrage charges reported on page 1 of Verification Exhibit 1 for the shipment in question. *See* Sales Verification Report at 40. Because CST failed to properly report these charges and we were unable to verify fully the domestic brokerage and handling expenses incurred by CST on certain home market sales, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of this new shipper review with respect to domestic brokerage and handling expenses. *See* Sales Verification Report at 34–41 and Verification Exhibit 11B.

According to section 776(b) of the Act, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action (SAA)* accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *See Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 2003 Fed. Cir. (*Nippon Steel*) (''Compliance with the 'best of its ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquires * * *'').

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. In the Department's verification outline issued to CST on June 6, 2005, we requested that CST be prepared to provide all supporting documentation relating to its reporting of domestic brokerage and handling expenses, which includes demurrage charges. *See* Letter to CST from Abdelali Elouaradia, Program Manager, Office 7, Sales Verification Outline, dated June 6, 2005 at 12. As described in the Sales Verification Report, CST failed to provide supporting documentation for demurrage charges within the time frame allowed during verification. *See* Sales Verification Report at 40. Because CST did not make sufficient effort to provide the requested information for domestic brokerage and handling expenses in a timely manner, we preliminarily determine that CST failed to cooperate to the best of their ability with respect to this claimed expense. For purposes of these preliminary results, as facts available, we have set domestic brokerage and handling expenses to zero (*i.e.*, making no adjustment) for CST's sales to this customer for the POR. *See* Memorandum to the File, through Abdelali Elouaradia, Program Manager, Office 7, ''Analysis of the Data Submitted by Comphania Sider´rgica de Tubarão (CST) for the Preliminary Results of New Shipper Review,'' dated August 12, 2005 (Prelim Analysis Memo) for details.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as the export transaction. *See also* section 351.412 of the Department's regulations. The NV LOT is based on the level of the starting–price sales in the comparison market or, when NV is based on CV, the level of the sales from which we derive SG&A expenses and profits. For EP sales, the U.S. LOT is based on the level of the starting–price sale, which is usually from the exporter to the importer. *See* section 351.412(c)(1) of the Department's regulations. As noted in the ''Export Price'' section above, we preliminarily find that all of CST's direct U.S. sales to unrelated customers are properly classified as EP sales.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT than EP sales, and the difference affects price comparability, as

manifested in a pattern of consistent price differences between sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000).

In determining whether separate LOTs existed in the home and U.S. markets for the respondent, we examine whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) (*i.e.*, order input/processing, packing, freight, delivery warranty, engineering, technical assistance, and after–sale services) to each customer or customer category, in both markets.

With respect to sales to the United States, CST stated that it had one channel of distribution in which it sold to unaffiliated U.S. trading companies. Although CST stated that it incurred no services for its U.S. sales, our review of the record indicates that at a minimum CST provided order input/processing, packing, freight, and delivery services for its sales to unaffiliated U.S. trading companies. *See* CST's Section A questionnaire response at Exhibit A–8. Based upon this information, we preliminarily find there to be one LOT for U.S. sales.

In this review, CST stated that it made sales of hot–rolled steel products in the home market via three channels of distribution: 1) to unaffiliated OEMs, *i.e.*, end–users, 2) to unaffiliated service centers, and 3) to affiliated OEMs. For each home market channel of distribution, CST stated that it provided minimal services which included engineering services, technical assistance, and after–sale services. In particular, we noted at verification that CST's engineering and technical assistance services involves answering customer inquires as to which product best suits a particular application. We also noted that CST's after–sales services consists of a brief follow–up with the customer via telephone to inquire as to how the product is working for them. *See* Sales Verification Report at 13. In reviewing CST's questionnaire responses and information presented at verification, we find that CST also provided the following services, at the same level, for sales via all three channels of distribution and to all customer categories: order input/processing, warranty services (*i.e.*, negotiation of appropriate compensation), packing, freight and delivery services. *See* CST's Section A questionnaire response at Exhibit A–8 and A–19–A–21. *See also* Sales Verification Report at 10–11. Based upon this information, we preliminarily find there to be one LOT for home market sales.

In analyzing CST's selling activities for its home and U.S. markets, we have preliminarily determined that essentially the same level of services were provided for both markets. Other than warranty, engineering, technical assistance, and after–sales services, which were solely provided on home market sales but did not involve significant activities, in both markets CST provided a similar level of services for order input/processing, packing, freight, and delivery services. *See* CST's Section A questionnaire response at A–19–A–21. For further discussion on the selling activities provided by CST in both markets, *see* the Prelim Analysis Memo. Based upon our review of this information, we do not consider the selling functions to vary significantly between the U.S. and home market LOTs. Therefore, we have preliminarily determined that the LOT for all EP sales is the same as the LOT for all sales in the home market. Based on our analysis of selling functions and because we find home market and U.S. sales at the same LOT, there is no basis for a LOT adjustment under section 773(a)(7)(A) of the Act for CST.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act and section 351.415 of the Department's regulations, based on the exchange rates in effect on the dates of the U.S. sales, as certified by Dow Jones Business Interactive, LLC (trading as Factiva).

Preliminary Results of New Shipper Review

As a result of our review, we preliminarily determine that the weighted–average dumping margin for the period March 1, 2004, through August 31, 2004, to be as follows:

Manufacturer/Exporter	Weighted–Average Margin (percent)
Comphania Siderúrgica de Tubarão	0.00

The Department will disclose the calculations performed within 5 days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR § 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR § 351.310(c). Any hearing, if requested, ordinarily will be held 37 days after the date of publication of these preliminary results, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results. *See* 19 CFR § 351.309(c)(ii). Rebuttal briefs limited to issues raised in such briefs, may be filed no later than 35 days after the date of publication. *See* 19 CFR § 351.309(d).

Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, not later than 90 days after the date of issuance of the preliminary results.

Assessment Rates

Upon completion of this new shipper review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon issuance of the final results of this new shipper review, if any calculated importer–specific assessment rates are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

Cash Deposit Requirements

CST may continue to post a bond or other security in lieu of cash deposits for certain entries of subject merchandise exported by CST. As CST has certified that it both produced and exported the subject merchandise, CST's bonding option is limited only to such merchandise for which it is both the producer and exporter. Bonding will no longer be permitted to fulfill security requirements for CST's shipments after publication of the final results of this new shipper review.

The following deposit rate will be effective upon publication of the final

results of this new shipper review for shipments of hot–rolled steel products from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise that is both produced and exported by CST, the cash deposit rate will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero, (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 42.12 percent, which is the ''all others'' rate established in the LTFV investigation. *See AD Order*, 67 FR at 11094. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR § 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

This new shipper review is issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: August 12, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

APPENDIX I

Unpublished Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration Certain Hot–Rolled Flat–Rolled Carbon Quality Steel Products from Brazil: New Shipper Review of Companhia Siderúrgica de Tubarão (CST), dated August 12, 2005.

[FR Doc. E5–4542 Filed 8–18–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–122–838)

Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada

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

SUMMARY: The Department of Commerce (the Department) has determined, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), that Western Forest Products Inc. (WFP) and its subsidiaries, WFP Products Limited, WFP Western Lumber Ltd., and WFP Lumber Sales Limited (collectively, ''the WFP Entities''), are the successors–in-interest to Doman Industries Limited, Doman Forest Products Limited, and Doman Western Lumber Ltd. (collectively, ''the Doman Entities'') and, as a result, should be accorded the same treatment previously accorded to the Doman Entities in regard to the antidumping order on certain softwood lumber products from Canada as of the date of publication of this notice in the **Federal Register**.

EFFECTIVE DATE: August 19, 2005.

FOR FURTHER INFORMATION CONTACT: Constance Handley or David Neubacher, at (202) 482–0631 or (202) 482–5823, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2005, WFP requested that the Department initiate and conduct an expedited changed circumstances review, in accordance with section 751(b) of the Act and section 351.216(b) of the Department's regulations, to confirm that the WFP Entities are the successors–in-interest to the Doman Entities. On June 29, 2005, the Department initiated this review and simultaneously issued its preliminary results that the WFP Entities are the successors–in-interest to the Doman Entities and should receive the Doman Entities' cash deposit rate of 3.78 percent. *See Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 70 FR 37327 (June 29, 2005) (*Preliminary Results*). In the *Preliminary Results*, we stated that interested parties could request a hearing or submit case briefs and/or written comments to the Department no later than 30 days after publication of the *Preliminary Results* notice in the **Federal Register**, and submit rebuttal briefs, limited to the issues raised in those case briefs, seven days subsequent to the due date of the case briefs. We did not receive any hearing requests or comments on the *Preliminary Results*.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and

(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is

dispositive. Preliminary scope exclusions and clarifications were published in three separate **Federal Register** notices.

Softwood lumber products excluded from the scope:

- trusses and truss kits, properly classified under HTSUS 4418.90
- I–joist beams
- assembled box spring frames
- pallets and pallet kits, properly classified under HTSUS 4415.20
- garage doors
- edge–glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40)
- properly classified complete door frames
- properly classified complete window frames
- properly classified furniture

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- *Box–spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.
- *Radius–cut box–spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size board, and sanding, and 2) the importer establishes to U.S. Customs and Border Protection's (CBP) satisfaction that the lumber is of U.S. origin.[1]
- *Softwood lumber products contained in single family home packages or kits*,[2] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

(A) The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

(B) The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and, if included in purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

(C) Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

(D) The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

(E) The following documentation must be included with the entry documents:

- a copy of the appropriate home design, plan, or blueprint matching the entry;
- a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- a listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
- in the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non–subject status based on U.S. country of origin will be treated as non–subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[3] The presumption of non–subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Final Results of Changed Circumstances Review

Based on the information provided by WFP, and the fact that the Department did not receive any comments during the comment period following the preliminary results of this review, the Department confirms its preliminary determination that the WFP Entities are the successors–in-interest to the Doman Entities for antidumping duty cash deposit purposes.

[1] For further clarification pertaining to this exclusion, see the additional language concluding the scope description below.

[2] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days, as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

[3] *See* the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B-099 of the main Commerce Building.

Instructions to the U.S. Customs and Border Protection

The Department will instruct CBP to suspend liquidation of all shipments of the subject merchandise produced and exported by the WFP Entities entered, or withdrawn from warehouse, for consumption, on or after the publication date of this notice at 3.78 percent (*i.e.*, the Doman Entities' cash deposit rate). This deposit rate shall remain in effect until publication of the final results of the ongoing administrative review, in which the WFP Entities/Doman Entities are participating.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(b) and 777(i)(1) of the Act, and section 351.216(e) of the Department's regulations.

Dated: August 12, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4540 Filed 8–18–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022304A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting the Precision Strike Weapon (PSW) Testing and Training by Eglin Air Force Base in the Gulf of Mexico

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to testing and training during Precision Strike Weapon (PSW) tests in the Gulf of Mexico (GOM), a military readiness activity, has been issued to Eglin Air Force Base (Eglin AFB).

DATES: Effective from July 28, 2005, through July 27, 2006.

ADDRESSES: The application, a list of references used in this document, and/or the IHA are available by writing to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the Final Environmental Assessment (Final EA) is available by writing to the Department of the Air Force, AAC/EMSN, Natural Resources Branch, 501 DeLeon St., Suite 101, Eglin AFB, FL 32542–5133. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)(MMPA) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review. In 2004, The National Defense Authorization Act (NDAA) (Public Law 108–136) amended section 101(a)(5) of the MMPA to exempt military readiness activities from the ''specified geographical region'' and ''small numbers'' requirements.

An authorization may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.z4''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The NDAA amended the definition of ''harassment'' in section 18(A) of the MMPA as it applies to a ''military readiness activity'' to read as follows:

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

Summary of Request

On February 4, 2004, Eglin AFB submitted a request for a 1–year IHA under section 101(a)(5)(D) of the MMPA and for an authorization under section 101(a)(5)(A) of the MMPA (to take effect after the expiration of the IHA), for the incidental, but not intentional taking (in the form of noise-related harassment), of marine mammals incidental to PSW testing within the Eglin Gulf Test and Training Range (EGTTR) for the next 5 years. The EGTTR is described as the airspace over the GOM that is controlled by Eglin AFB; it is also referred to as the ''Eglin Water Range.''

PSW missions involve air-to-surface impacts of two weapons, the Joint Air-to-Surface Stand-off Missile (JASSM) AGM–158 A and B and the small-diameter bomb (SDB) (GBU–39/B) that result in underwater detonations of up to approximately 300 lbs (136 kg) and 96 lbs (43.5 kg, double SDB) of net explosive weight (NEW), respectively.

The JASSM is a precision cruise missile designed for launch from outside area defenses to kill hard, medium-hard, soft, and area-type targets. The JASSM has a range of more than 200 nautical miles (nm) (370 kilometers (km)) and carries a 1,000–lb (453.6 kg) warhead. The JASSM has approximately 300 lbs (136 kg) of TNT equivalent NEW. The explosive used is AFX–757, a type of plastic bonded explosive (PBX) formulation with higher blast characteristics and less sensitivity to many physical effects that could trigger unwanted explosions. The JASSM would be launched from an aircraft at altitudes greater than 25,000 ft (7620 m). The JASSM would cruise at altitudes greater than 12,000 ft (3658 m)

for the majority of the flight profile until it makes the terminal maneuver toward the target. The JASSM exercise involves a maximum of two live shots (single) and 4 inert shots (single) each year for the next 5 years. One live shot will detonate in water and one will detonate in air. Detonation of the JASSM would occur under one of three scenarios: (1) Detonation upon impact with the target (about 5 ft (1.5 m) above the GOM surface); (2) detonation upon impact with a barge target at the surface of the GOM; or (3) detonation at 120 milliseconds after contact with the surface of the GOM.

The SDB is a glide bomb. Because of its capabilities, the SDB system is an important element of the Air Force's Global Strike Task Force. The SDB has a range of up to 50 nm (92.6 km) and carries a 217.4–lb (98.6 kg) warhead. The SDB has approximately 48 lbs (21.7 kg) of TNT equivalent NEW. The explosive used is AFX–757. Launch from an aircraft would occur at altitudes greater than 15,000 ft (4572 m). The SDB would commence a non-powered glide to the intended target. The SDB exercise involves a maximum of six live shots a year, with two of the shots occurring simultaneously, and a maximum of 12 inert shots, with up to two occurring simultaneously. Detonation of the SDBs would occur under one of two scenarios: (1) Detonation of one or two bombs upon impact with the target (about 5 ft (1.5 m)above the GOM surface), or (2) a height of burst (HOB) test: Detonation of one or two bombs 10 to 25 ft (3 to 7.6 m) above the GOM surface. No underwater detonations of the SDB are planned.

The JASSM and SDBs would be launched from B–1, B–2, B–52, F–15, F–16, F–18, or F–117 aircraft. Chase aircraft would include F–15, F–16, and T–38 aircraft. These aircraft would follow the test items during captive carry and free flight but would not follow either item below a predetermined altitude as directed by Flight Safety. Other assets on site may include an E–9 turboprop aircraft or MH–60/53 helicopters circling around the target location. Tanker aircraft including KC–10s and KC–135s would also be used. A second unmanned barge may also be on location to hold instrumentation. Targets include a platform of five containers strapped, braced, and welded together to form a single structure and a hopper barge, typical for transportation of grain.

The proposed Eglin AFB action would occur in the northern GOM in the EGTTR. Targets would be located in water less than 200–ft (61–m) deep and from 15 to 24 nm (27.8 to 44.5 km) offshore, south of Santa Rosa Island and south of Cape San Blas.

Comments and Responses

A notice of receipt of Eglin AFB's application and proposed IHA was published in the **Federal Register** on April 22, 2004 (69 FR 21816). That notice described, in detail, Eglin AFB's proposed activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30–day public comment period, substantial comments were received from the Marine Mammal Commission (Commission), the Gulf Restoration Network (GRN), and the Acoustic Ecology Institute (AEI). Other comments received from individuals on this proposed action only expressed either support for, or concern over, missile launches based on a news article.

MMPA Concerns

Comment 1: The GRN has concerns that NMFS proposes to issue a 1–year IHA, followed by a 5–year authorization to Eglin AFB. The GRN is unclear why NMFS is presently contemplating the issuance of an IHA when it has already stated its intention to propose regulations. The GRN asks whether the interim action is being considered to enable Eglin AFB and/or NMFS to complete an in-depth environmental analysis of the potential long-term impacts of the activity prior to making a final decision on the regulations. Alternatively, GRN asks, is this an attempt to essentially allow Eglin AFB a 6–year LOA, which GRN believes would be impermissible under the MMPA?

Response: NMFS proposes to issue a 1–year IHA to Eglin AFB for its activities over the next 12 months. Subsequent authorizations will likely proceed under section 101(a)(5)(A) of the MMPA, which allows for take authorizations over a 5–year time horizon. The alternative to issuance of Letters of Authorization (LOAs) under section 101(a)(5)(A) regulations would be to continue processing applications under section 101(a)(5)(D) of the MMPA, and, presumably, issue IHAs annually to Eglin for PSW activities. Either way, the public would be provided another opportunity to comment on Eglin AFB's application and NMFS' proposed action. We disagree that it is not permissible to follow a one-year IHA with a 5–year rule and regulations that govern take authorizations. The MMPA does not limit the number of times or the period of time over which an applicant can receive an incidental take authorization so long as all the requirements are met. For our determination under the National Environmental Policy Act (NEPA), see that section later in this document.

Comment 2: The Commission notes that the proposed weapons test appear to fit within the definition of a ''military readiness activity'' as defined in section 315(f) of Public Law 107–314, which includes ''the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use.'' As such, the revised definition of harassment adopted in the NDAA (Public Law 108–136) would seem to be applicable in this instance. However, NMFS' analysis of the small take request does not seem to have employed this definition. If NMFS' preliminary conclusion that no take by serious injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of (proposed) mitigation measures is correct, it may be that no taking by harassment can be expected and that no authorization is needed. The Commission therefore recommends that NMFS analyze the request for an IHA and the small take regulations being contemplated in light of the applicable definition of the term ''harassment.'' Although the Commission appreciates NMFS has yet to promulgate regulations or take other steps to implement the new definition, the statutory change cannot be ignored.

Response: In the preamble to the notice of proposed authorization and in this document, NMFS cited the NDAA definition of Level B harassment for military readiness activities. While NMFS believes that the monitoring to be implemented by Eglin AFB will ensure that the probability of Level A harassment will be very low (1–2 animals/year-see Table 4) and mortality likely to be zero (see Table 3), an authorization under section 101(a)(5) of the MMPA is warranted because some animals may be harassed if the mitigation and monitoring overlooks an animal.

Given the scientific uncertainty associated with predicting animal presence and behavior in the field, NMFS accords some deference to applicants requesting an MMPA authorization for an activity that might fall slightly below the NDAA definition of harassment, so that they are covered for impacts that may rise to the level of take. Equally important, such an authorization also carries with it responsibilities to implement mitigation

and monitoring measures to protect marine mammals.

Marine Mammal Impact Concerns

Comment 3: The GRN is concerned with Eglin AFB's and/or NMFS' claim that the activity will only result in Level B harassment. The record before the agency clearly establishes the potential for injury (Level A harassment) or even death among marine mammals as a result of this testing.

Response: Neither Eglin AFB nor NMFS have claimed that there is no potential for incidental injury to occur as a result of this activity. While the application calculated that 6–7 marine mammals may incur a Level A (injury) harassment, recalculation of the potential for injury has resulted in a revised estimate of 1–2 animals annually. Also the criterion for mortality is lung hemorrhage calculated for a small dolphin calf at 31 psi-msec. For the PSW, the zone of potential lethality is approximately 75–320 m (246–1050 ft) around the detonation point (Table 2). Table 3 provides a risk analysis that indicates that less than 1 cetacean might be killed annually even if no mitigation measures were implemented. However, NMFS believes that due to the mitigation measures that Eglin AFB will implement, it is very unlikely that any cetaceans will be killed, and injury is also unlikely as a result of PSW activities.

Comment 4: The GRN notes that the **Federal Register** notice states that from 3 to as many as 103 cetaceans would potentially be exposed annually to 182 dB by the action and GRN contends that the impact of the action would therefore be more than negligible and would not be an appropriate subject of an IHA. The GRN disagrees with NMFS' claim that exposure to sound levels greater than 182 dB on possibly 13 percent of the GOM cetaceans would constitute only non-injurious Level B harassment.

Response: Neither Eglin AFB nor NMFS claim that 13 percent of the GOM cetacean population might be affected by Eglin's PSW activities. As shown in the proposed authorization notice (69 FR 21816, April 22, 2004), only four of the 29 species/stocks of marine mammals that inhabit the GOM would be within the area offshore Eglin AFB. Of the high estimate of 103 cetaceans that might be subject to sound exposure levels (SELs) of 182 dB re 1 microPa^2–s or higher, roughly half would be bottlenose dolphins and half would be Atlantic spotted dolphins. No more than a single *Kogia* individual might be subject to an SEL of 182 dB re 1 microPa2–s. As a result of an error in estimating the number of shots, those numbers in the application were higher than currently projected and analyzed in this document.

The rationale on why exposure to an SEL of this magnitude would result in only Level B harassment takes (by TTS) and why these takings would have only negligible impacts was discussed in the proposed IHA authorization **Federal Register** notice with reference to the scientific basis for that reasoning. That information is also provided in detail later in this document. To assess impacts on marine mammals from explosives, NMFS and Eglin used the energy flux density (EFD) metric. This is also explained in the proposed IHA notice and later in this document.

Comment 5: Citing from the Minerals Management Service's 2002 Draft Programmatic EA for GOM seismic activities, the GRN notes that a received sound pressure level of 180 dB re 1 micro Pa (rms) or greater is an indication of potential concern about temporary and/or permanent injury (to cetaceans, such as sperm whales). Thus, GRN believes, there is significant uncertainty as to whether Level A harassment would be limited to ''nearly 3 cetaceans'' or could instead affect 103 cetaceans. In the face of this uncertainty, the GRN would contend that the no action alternative is appropriate.

Response: The principal metric employed for determining harassment, injury and mortality in this action is EFD, not sound pressure levels. The scientific basis for employing this metric is explained in detail in Eglin's application and later in this document. Use of the energy metric has been employed in the shock trials of the USS SEAWOLF (see 63 FR 66069, December 1, 1998) and USS WINSTON S. CHURCHILL (66 FR 22450, May 4, 2001).

Comment 6: The Commission remains concerned that NMFS continues to categorize temporary threshold shift (TTS) as constituting Level B harassment, discounting the potential that diminishment of hearing capability in marine mammals, even if only of limited duration, may cause impairment that could lead to injury or even death (e.g. by lowering the ability of an animal to detect and avoid predators or ships). The Commission notes, however, that regardless of whether TTS is considered Level A or Level B harassment, taking could be authorized under a section 101(a)(5)(D) IHA, provided that mortalities do not occur.

Response: As mentioned in previous **Federal Register** documents, second level impacts due to a marine mammal having a temporary hearing impairment cannot be predicted and are, therefore, speculative. The principal reason that second level impacts are not considered in classification is that any Level B disruption of behavior could, with suppositions, be seen as potentially dangerous and, therefore, considered potential Level A harassment or even lethal. Similarly, Level A injuries could be seen as being accompanied by some disruption of behavior and, therefore, with both Level B disturbances and Level A injuries. Such reasoning blurs the distinctions between the definitions of harassment. NMFS believes that Level B harassment, if of sufficient degree and duration, can be very serious and require consideration, as has been done here. Moderate TTS does not necessarily mean that the animal cannot hear, only that its threshold of hearing is raised above its normal level. The extent of time that this impairment remains is dependent upon the amount of initial TS, which depends on the strength of the received sound and whether the TTS is in a frequency range that the animal depends on for receiving cues that would benefit survival. It should be noted that increased ambient noise levels, due to biologics, storms, shipping, and tectonic events may also result in short-term decreases in an animal's ability to hear normally. NMFS scientists believe that marine mammals have likely adopted behavioral responses, such as decreased spatial separation, slower swimming speeds, and cessation of socialization to compensate for increased ambient noise or hearing threshold levels.

Ship strikes of whales by large vessels suggest that at least certain species of large whales do not use vessel sounds to avoid interactions. Also, there is no indication that smaller whales and dolphins with TTS would modify behavior significantly enough to be struck by an approaching vessel. Finally, a hypothesis that marine mammals would be subject to increased predation presumes that the predators would either not be similarly affected by the detonation or would travel from areas outside the impact zone, indicating recognition between the signal of a single detonation at distance and potentially debilitated food sources. Therefore, NMFS does not believe the evidence warrants that all (or an unknown percentage) of the estimated numbers of Level B harassment be considered as Level A harassment or as potential mortalities.

Comment 7: The Commission states that NMFS seems to discount entirely the possibility that marine mammals may be harassed through changes in behavioral patterns other than by TTS.

The basis for this conclusion is not clear from the discussion on page 21819 of the **Federal Register** notice. Additional explanation is needed and should consider, among other things, whether marine mammals might alter their use patterns in the vicinity of detonations, or even abandon an area, as a result of infrequent or even a one-time exposure.

Response: NMFS does not have information to support the Commission's hypothesis that marine mammals would abandon or significantly alter their natural behavioral patterns in response to a single explosive detonation. Contrary to this hypothesis, NMFS believes that, unless the mammal was transiting the area, it is unlikely that a marine mammal would leave an area that provides important biological resources for sustenance and reproductive success from the sounds from a single distant water detonation (presuming here that it is more likely that an animal will spend the majority of its time in a biologically important area). In fact, the GOM has thousands of lightning strikes annually (approximately 10 strikes per sq km per year in the GOM with source levels of about 260 dB re 1 microPa (peak)(NASA, 2005). It is likely that marine mammals are evolutionarily adapted to natural events such as tectonics and lightning storms, which have similar characteristics to the explosives in this action. In the absence of additional information, NMFS concludes that a marine mammal may be startled by the received sound level from a single explosive detonation if near enough to the source, but it is highly unlikely that marine mammals would abandon or significantly alter their behavior patterns. Therefore, we do not believe effects rise to the level of a significant alteration or abandonment of natural behavioral patterns, i.e., Level B harassment. In any case, Level B takes are counted insofar as we consider TTS to be Level B harassment.

Comment 8: The Commission believes that NMFS needs to provide a better explanation of, and justification for, using the dual criteria established for determining non-lethal injury (i.e., the onset of slight lung hemorrhage and a 50 percent probability for eardrum rupture).

Response: Explanation and justification were provided in detail in both the SEAWOLF and CHURCHILL Final EISs (DoN 1998 and DoN 2001). An updated summary for using the dual injury criteria from those documents is provided here:

1. Auditory System Injury

Tympanic membrane (TM) rupture, while not necessarily a serious or life-threatening injury, is a useful index of injury that is well correlated with measures of permanent hearing loss (Ketten, 1995, 1998). The occurrence of 50 percent TM rupture has been correlated to 30 percent permanent threshold shift (PTS) (Ketten, 1995, 1998) and will be considered as the index for permanent auditory system injury. In this response, the criteria will be explained for conservatively estimating the range for occurrence of 50–percent TM rupture (30–percent PTS). Significant occurrence of TM rupture would be expected at ''near field'' ranges significantly closer to the charge than the ranges for TTS and onset of PTS. For the CHURCHILL EIS injury model, TM rupture criteria were based on a limited number of small charge underwater explosion tests conducted with small terrestrial mammals as reported by both Yelverton *et al.* (1973) and Richmond et al. (1973). TM rupture-specific tests were conducted with post-mortem dogs (nominal 25–kg body mass) using 1–lb (0.45–kg) TNT charges. Additional TM rupture data from general injury tests conducted with sheep (nominal 40–kg body mass) using 0.5–lb and 1–lb (0.23–kg and 0.45–kg) pentolite charges were also included.

Damage to terrestrial mammal internal organs typically has been referenced to total shock wave impulse (pressure integrated over time) (Richmond *et al.* (1973) and Yelverton *et al.* (1973)). Yelverton *et al.* (1973) state that eardrum ruptures would occur at sub-lethal impulses of 20 to 40–psi-msec (138 to 276–Pa-sec) and that an impulse of 10–psi-msec (69–Pa-sec) or less would not cause eardrum ruptures.

Acoustic energy (proportional to the square of pressure integrated over time) may be one of the appropriate parameters for evaluation of the response of the mammalian ear to the intensities of underwater noise at least sufficient to cause TTS. The shock wave's EFD appears to be at least as good an indicator/predictor of auditory system injury (TM rupture) as impulse and, for the CHURCHILL shock trial conditions, provided a means to include the potential effects of the bottom-reflected pressure wave.

Logarithmic interpolation of the test data for EFDs for 42 percent and 67 percent TM rupture indicates that the calculated EFD required for the occurrence of 50 percent TM rupture (approximately 30 percent PTS) is 1.17 in-lb/in2 (20.44 milli-Joules/cm^2). The small sample sizes for the reported terrestrial animal test data in combination with the inherent variability in the occurrence of TM rupture at levels less than approximately 50 percent preclude realistic predictions of low percentages of occurrence of TM rupture.

2. Onset of Slight Lung Injury

Using data from tests with small terrestrial mammals from Yelverton *et al.* (1973) and Richmond *et al.* (1973), Goertner (1982) developed a conservative model for calculating the ranges for occurrence of two types of internal organ injury to marine mammals exposed to underwater explosion shock waves. The two injury mechanisms considered are (1) slight lung hemorrhage, and (2) contusions and hemorrhage of the gastrointestinal (G.I.) tract. For lung hemorrhage, the Goertner model considers lung volume as a function of animal weight and depth and considers shock wave duration and impulse tolerance as a function of animal weight and depth. Goertner indicated that slight injury to the G.I. tract could be related to the magnitude of the peak shock wave pressure over the hydrostatic pressure and would be independent of mammal size and weight. Slight contusions to the G.I. tract occurred during small charge tests (Richmond *et al.*, 1973) when the peak shock wave pressure was 104 psi above hydrostatic pressure. Onset of G.I. tract contusion and onset of slight lung hemorrhage are injuries from which a mammal would be expected to recover on its own and would not be debilitating. For small mammals, significant G.I. tract injury (G.I. tract hemorrhage) would be expected to occur at ranges significantly closer to the explosion than the maximum calculated ranges for the onset of slight lung injury. Injury ranges determined on the basis of the Goertner model are most appropriate for use in regions close to the explosive charge.

After correcting for the atmospheric and hydrostatic pressures for the data, the minimum impulse (I) for predicting onset of slight lung hemorrhage in a small mammal is:

I = 19.7 (M/42)1/3 psi-msec, or

I = 136 (M/42)1/3 Pa-sec,

where M is the body mass (in kg) of the subject animal. Impulse values from the above equation provide a shallow depth ''starting point'' for determining the maximum range and the corresponding ''at-depth'' impulse level for the specific charge weight and marine mammal size. A maximum range should not be calculated using only the above impulse/body mass relationship

and the total impulse similitude equation for a specific explosive.

The modified Goertner model is very sensitive to mammal weight. By assuming a small mammal weight for an impact analysis, the onset of slight injury range is maximized for conservatism. Injuries from explosions in relatively shallow water (i.e., on the continental shelf) may be exacerbated by strong bottom-reflected pressure pulses.

Comment 9: In reviewing NMFS' May 4, 2001, response to the Commission's January 26, 2001, comments (see 66 FR 22456, May 4, 2001), NMFS appears to agree with the Commission that eardrum rupture is a questionable measure of acoustic injury in marine mammals. NMFS notes that ''(b)ecause the criterion is based upon land mammals rather than marine mammals, and because TM (tympanic membrane) rupture research has not been conducted on marine mammals, it is not the 50–percent rupture itself that is the criterion used, but the 'impulse' in psi-msec that is associated with other impacts on the body...the EFD that causes either the 50 percent TM rupture or the impulse that causes slight lung hemorrhage is the real criterion.'' NMFS' response further indicates that ''because the impulse estimated to cause slight lung hemorrhage was more conservative (i.e., had a greater range), it is slight lung hemorrhage that is the defining criterion used for determining injury in this action, not the EFD used for 50–percent TM rupture.'' Based on this explanation, it appears that the 50 percent probability for eardrum rupture is not a useful metric in that it cannot be measured. In essence, the probability for eardrum rupture substitutes for another metric (PTS), which also cannot be measured. Because of these difficulties, neither metric is ultimately used in setting the safety zone.

Response: Although non-lethal impact cannot be measured for wild animals at the time of the action, acoustic thresholds for injury have been derived from tests on terrestrial animals in water. These thresholds are the best science available today. For the subject action, the impact range determined from the lung injury threshold is the most conservative. However, in other actions, the eardrum rupture threshold may be more conservative. For that reason, the dual criteria are needed to use a conservative approach for determining injury ranges for the variety of explosive activities considered by NMFS for incidental take authorizations.

Comment 10: Related to the previous comment, the Commission notes that both the May 4, 2001, and the April 22, 2004, **Federal Register** notices give a value of EFD that would cause 50 percent probability of TM rupture, but provide no reference for this value and no indication of the signal waveform or the time interval over which the energy density flux is integrated. Before using this value of EFD as the threshold of Level A harassment for an authorization, the applicant or NMFS needs to provide the waveform and integration time interval and explain the scientific basis for this choice.

Response: Explanation and reference for the EFD value are found in response to comment 8. The nominal source waveform at unit distance used for the Air Force risk assessment modeling is defined as follows:

$p(t) = 0$ for $t < 0$

$p(t) = p_{max} \exp(-t/t)$ for $t > 0$

where p(t) is pressure as a function of time, t. Pmax represents peak pressure at unit distance and t is the characteristic time at unit distance. The waveform and parameters are estimated using the similitude formulas of Weston (1960) (see, e. g., Urick, 1983)(note that this is the Friedlander waveform).

Consistent with NMFS' SEAWOLF and CHURCHILL rulemakings and the Navy's NEPA analyses for those actions, no bubble pulses were included (and are not considered important for near surface shots). The waveforms were 'propagated' using the similitude-based peak pressures and characteristic times as functions of distance. The propagation model was the Navy standard CASS-GRAB model, modified to calculate impulse response of the channel.

At range, the squared pressure for the entire set of arrivals was integrated over time, and normalized by the scalar acoustic impedance, to yield total energy (i.e., the integration was over the duration of all arrivals).

Comment 11: The Commission believes that additional clarification and justification is needed concerning the ''non-injurious behavioral response'' threshold proposed in Table 6–1 on page 14 of the application. The applicant suggests a level of 6 dB below TTS (i.e., 176 dB re 1 microPa^2-sec) as a reasonable criterion to assess potential behavioral responses of marine mammals. However, neither the application nor the NMFS notice provides information as to how this number was derived. Prior to issuing the requested authorization, the applicant or NMFS should provide additional information to support the scientific basis for using this criterion.

Response: As noted in the proposed authorization notice, the PSW action consists of single detonations. Based on the science used to develop the CHURCHILL criteria, for single detonations a significant response by a marine mammal is not expected to occur other than by TTS. The discussion in the application and **Federal Register** notice is relevant to actions involving multiple detonations. NMFS will address comments on this threshold criterion in an applicable proposed IHA authorization with multiple detonations.

Comment 12: The Commission notes that the **Federal Register** notice for the proposed IHA states that, in its rulemaking on the CHURCHILL ship shock testing, NMFS adopted two criteria for estimating the TTS threshold: 182 dB and 12 psi. The notice states that the second criterion ''was introduced to provide a more conservative safety zone for TTS when the explosive or the animal approaches the sea surface (for which the explosive energy is reduced but the peak pressure is not).'' The notice states that ''for large explosives (2,000 to 10,000 lbs) and explosives/animals not too close to the surface, the TTS impact zones for these two TTS criteria are approximately the same. However, for small detonations, some acousticians contend that ranges for the two TTS thresholds may be quite different, with ranges for the peak pressure threshold several times greater than those for energy.'' NMFS notes that the applicant is endorsing an approach being developed by the Navy for ''scaling'' the peak pressure threshold in order to estimate more accurately the TTS for small detonations while preserving the safety feature provided by the peak pressure threshold. The Commission recommends that, in any authorization issued to Eglin AFB, NMFS provide the full set of data, assumptions, and calculations considered in its review.

Response: This issue remains under review by the Navy, the U.S. Air Force and NMFS. Navy acousticians believe that Ketten (1995), which summarized earlier acoustic research, does not fully support using a 12–psi peak pressure threshold for TTS for underwater explosion impacts on marine mammals from small detonations. The original basis in Ketten (1995) for the use of the 12–psi threshold for the SEAWOLF and CHURCHILL actions (which were 10,000 lb (4,536 kg) detonations) is the use of a combination of in-air and in-water peak pressure measurements without adjustment for the medium. A re-examination of the basis for the 12–psi threshold by Navy acousticians indicate that, for underwater explosions of small charges, a higher threshold may

be warranted. This led the Navy and Eglin to suggest scaling 12 psi for small charges, which was used in the proposed authorization notice and analysis. Although this issue remains under review by NMFS and the Navy for future rulemaking actions (including the upcoming PSW proposed rule), as an interim criterion for this IHA, NMFS is adopting the experimental findings of Finneran *et al.* (2002) that TTS can be induced at a pressure level of 23 psi (at least in belugas). As explained here, this is considered conservative since a 23 psi pressure level was below the level that induced TTS in bottlenose dolphins.

Finneran *et al.* (2000; as described in Finneran *et al.* (2002)) conducted a study designed to measure masked TTS (MTTS) in bottlenose dolphins and belugas exposed to single underwater impulses. This study used an ''explosion simulator'' (ES) to generate impulsive sounds with pressure waveforms resembling those produced by distant underwater explosions. No substantial (i.e., 6 dB or larger) threshold shifts were observed in any of the subjects (two bottlenose dolphins and 1 beluga) at the highest received level produced by the ES: approximately 70 kPa (10 psi) peak pressure, 221 dB re re 1 micro Pa peak-to-peak (pk-pk) pressure, and 179 dB re 1 microPa^2–s total EFD. In Finneran *et al.* (2002), a watergun was substituted for the ES because it is capable of producing impulses with higher peak pressures and total energy fluxes than the pressure waveforms produced using the ES. It was also preferable to other seismic sources because its impulses contain more energy at higher frequencies, where odontocete hearing thresholds are relatively low (i.e., more sensitive). Hearing thresholds were measured at 0.4, 4 and 30 kHz. MTTSs of 7 and 6 dB were observed in the beluga at 0.4 and 30 kHz, respectively, approximately 2 minutes following exposure to single impulses with peak pressures of 160 kPa (23 psi), pk-pk pressures of 226 dB re 1 microPa, and total EFD of 186 dB re 1 microPa^2–s. Thresholds returned to within 2 dB of the pre-exposure value approximately 4 minutes post exposure. No MTTS was observed in the single bottlenose dolphin tested at the highest exposure conditions: peak pressure of 207 kPa (30 psi), 228 dB re 1 microPa pk-pk pressure, and 188 dB re 1 microPa^2–s total energy flux. Therefore, until additional scientific information is obtained, NMFS has determined that the pressure criterion for small explosions can be raised from 12 psi to 23 psi. At this time, NMFS believes that setting the pressure metric at 23 psi is conservative.

It should be noted that the PSW mission includes only a single JASSM detonation in water, all other detonations are in-air detonations. Analyses indicate that the ranges for the 23– psi TTS metric at depths greater than 20 ft (6.1 m) are less conservative than the originally provided ranges for the 182–dB (re 1 microPa^2–s) TTS energy metric. Conversely, ranges for the 23–psi TTS metric in air and at the 1–ft (0.3–m) water depth are more conservative than the ranges originally provided for the 182–dB energy metric. For the PSW activity, NMFS will use the more conservative values to determine impacts (Table 1).

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Table 1 . Zones of Impact for Underwater Explosions (Mid-Depth Animal)

Ordnance	NEW (TNT in lb)	Depth or Height of Explosion (m)	Ranges for 182 dB EFDLin 1/3-Octave Band (m)	Ranges for 23 psi (m)
Summer				
Single SDB	48	1.5	47	447*
		7.6	48	447*
Double SDB	96	1.5	65	550*
		7.6	66	550*
Single JASSM	300	0.3	520	770*
		>6.1	2490*	770
Winter				
Single SDB	48	1.5	47	471*
		7.6	48	471*
Double SDB	96	1.5	65	594*
		7.6	66	594*
Single JASSM	300	0.3	580	871*
		>6.1	3250*	871

* Range used for take calculations

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Mitigation and Monitoring Concerns

Comment 13: Based on the information contained in the application and **Federal Register** notice, the Commission believes that NMFS' preliminary determinations are reasonable, provided that the proposed mitigation and monitoring activities are adequate to detect all marine mammals in the vicinity of the proposed operations and sufficient to ensure that marine mammals are not being taken in unanticipated ways or numbers. The Commission notes however, that even under the best of conditions and using experienced observers, there is greater than an 80 percent likelihood that small cetaceans, particularly species such as dwarf or pygmy sperm whales, will not be observed if they are in the vicinity of the test site. Thus, although there may be a low probability that certain marine mammal species will be within the area where mortalities are considered possible at the time of weapon deployment, it is unclear that the proposed monitoring effort will be adequate to detect them if they are present. This being the case, the proposed monitoring activities may be insufficient to provide assurance that marine mammals are not being exposed to sound pressures or energy levels that could cause lethal injuries. Thus, NMFS, before issuing the requested authorization, should further explain its rationale for determining that the takings will only be by harassment.

Response: The monitoring effort for PSW is similar to that used in previous ship-shock actions wherein detonations of 10,000 lbs (4536 kg) were used without any serious injuries or mortalities being detected during extensive follow-up monitoring. While dwarf/pygmy sperm whales are unlikely to be in the general area and, therefore, not subject to potential injury or mortality, past shock trial exercises considered the detection of these species to be 50 percent by vessel observers and 10 percent by aerial observers. For the bottlenose and spotted dolphins, detection by shipboard observers is 100 percent and aerial observers at 50 percent giving an overall detection capability of 90 percent (DON, 1999, Appendix C). However, for safety reasons, monitoring personnel will need to vacate the respective safety zones in advance of detonation, as explained later in this document (see Table 6 in Mitigation). As a result, Eglin AFB and NMFS calculate an overall monitoring effectiveness of 30 percent for all species. Table 3 in this document indicates that the risk for a lethal take of an individual marine mammal from all PSW exercises with a 30–percent mitigation effectiveness is less than one animal.

There is a scientific methodology to estimate the probability of detecting marine mammals during vessel assessment surveys, as explained in detail in Buckland *et al.* (1993) and Barlow (1995). Methodology includes several components, including the probability that the mammal will be at the surface and potentially sightable while within visual range of the observers, the probability that an animal at the surface will in fact be detected, and the relationship between sighting probability and lateral distance from the ship's trackline. One factor providing better detection rates for *Kogia spp.* for this action is that the vessel observers will be monitoring a relatively small area, not conducting track line surveys at a high rate of speed as done in NMFS marine mammal abundance surveys. In addition, Eglin will be conducting aerial marine mammal surveys over an area of 12.56 nm^2 (2–nm (3.7–km) radius), further precluding animals from entering the safety zone undetected. As a result of all of these factors, NMFS is confident that no marine mammals will be killed as a result of Eglin's PSW activities.

Comment 14: The Commission recommends that, if NMFS determines that the potential for lethal injuries is sufficiently remote to warrant the issuance of an authorization under section 101(a)(5)(D) of the MMPA, any such authorization explicitly require that operations be suspended immediately if a dead or seriously injured animal is found in the vicinity of the test site, pending authorization to proceed or issuance of regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

Response: Testing consists of a single exercise with a single detonation with weeks or months likely between detonations. As a result, if a seriously injured or dead marine mammal is found in the vicinity of the test operations do not need to be ''immediately suspended,'' but future tests will not occur until the serious injury or mortality has been investigated as to likely cause.

Comment 15: The GRN and the AEI find that the proposed mitigation is inadequate to protect marine species in the GOM. Both groups claim that visual monitoring is not an effective method for detecting all cetaceans. The GRN notes that sperm whales, for instance, are known for their extremely long, deep-water dives. Up to 5000 ft (1524 m) dives have been reported for periods up to 2 hours long. The animals would not be visible to observers in either a helicopter 250 ft (76.2 m) above the surface of the water or on board a ship, and they could easily surface unnoticed in an area impacted by the testing. Reliance on visual monitoring is not sufficient to adequately protect cetacean populations in the GOM. Instead, if allowed to proceed with the proposed activity, Eglin AFB should be required to use passive acoustic monitoring to ensure that impacts to protect species are minimal.

Response: While sperm whales and other deep-diving marine mammals may remain submerged for long periods of time, the proposed action would be located in waters less than 200 ft (61 m) deep. This habitat is not expected to be utilized by sperm whales or beaked whales. The marine mammal species that inhabit the waters off Eglin AFB are the bottlenose dolphin, spotted dolphin and possibly *Kogia*. Other than *Kogia*, these species are easily sighted from aircraft and ships. While *Kogia* are more difficult to see, restricting exercises to sea states lower than 4, having aerial coverage in addition to shipboard observers, and the small zone for Level A harassment, should eliminate the likelihood that *Kogia* or other marine mammal species would be injured or killed. Therefore, requiring the use of passive acoustics is not warranted.

Comment 16: The GRN is also concerned by Eglin AFB's apparent emphasis on post-mission monitoring (affording 2 hours of aerial surveys after the activity and only one hour of continuous aerial surveying prior to detonation of the weapons). The GRN believes that, although post-mission monitoring is important, major emphasis should be placed on preventing harm, not quantifying the number of dead and injured marine mammals and sea turtles.

Response: NMFS believes that both pre-detonation monitoring and post-detonation monitoring are important. Eglin will begin vessel surveys 5 hours prior to the test and aerial surveys of the test site 2 hours prior to the proposed time of detonation (Eglin, 2004). For safety reasons, aircraft and ships will need to begin exiting the area 15 minutes prior to detonation (see Table 6). While it is very unlikely that marine mammals will enter the relatively small impact zone between the time vacating the area and the time of detonation, post monitoring will provide valuable information on whether current mitigation measures are fully effective at preventing mortality and serious injury.

Comment 17: The AEI believes that NMFS should consider the use of active

acoustic systems (i.e., fish-finding sonar) to identify large schools of fish and/or individual sea turtles that may be affected by the bombing exercises.

Response: Large fish schools and sea turtles will be more effectively sighted by the marine mammal monitoring aircraft than by standard ''fish finding'' sonars. However, to the extent that the monitoring vessel can utilize its acoustic equipment to detect fish schools and sea turtles, NMFS recommends that it do so. This acoustic equipment is of low intensity and, therefore, is not expected to result in marine mammal harassment. However, the use of more sophisticated high-intensity military sonars are not recommended for use as a mitigation/monitoring tool here because of its potential impacts to marine mammals and other marine life.

Comment 18: The AEI notes that the recent calibration test for Lamont-Doherty Earth Observatory's marine seismic array in the GOM indicates that in relatively shallow water, loud low-frequency acoustic sources may lead to received levels of concern at greater distances than current models would suggest. As a result, received level models of the bombing exercises should be based at least on the most recent propagation models. Also, the most reliable safety radii would be determined by real-world tests in the areas planned for the exercises.

Response: The model employed by L-DEO for seismic arrays is different from the model used by Eglin and the Navy for explosives. The subject risk assessment employs the CASS/GRAB Navy Standard propagation model and Navy Standard environmental databases (including bathymetry, sound speed, and 15–parameter geo-acoustic sediment properties). These are considered state of the art. The propagation model starts with impulse response and accounts for multipath propagation in the water column and in the sediments. Hence, it estimates the effects of the 'bottom' in shallow water. For sediments like those found at the coastal water sites for Eglin's risk assessment, propagation of sound energy at the lower frequencies (below several hundred Hertz) is generally much better than that in deep water. This enhanced propagation for energy metrics is included in the range estimates for the risk assessment.

It should be noted that sound propagation in shallow water has been a topic of intense study and measurement for at least 50 years, primarily by the U.S. Navy, but also by other nations and international bodies. Shallow-water bottom effects('reverberant' multipaths, shallow water waveguides, low-frequency cutoff, influence of sea state, etc.) are all covered in most basic underwater-acoustics textbooks (e.g., Urick, 1967).

Comment 19: The GRN questions whether post-activity monitoring, when limited to 2 hours, can accurately estimate the effectiveness of pre-activity monitoring. While many dead marine mammals and sea turtles may rise to the surface immediately after the mission, it is possible that the lethal impacts of the activity may not be immediate. As a result, sea turtles and marine mammals may resurface days later, float to shore, and may or may not be reported to a stranding network.

Response: Considering the extensive pre-mission mitigation measures implemented to prevent injury or mortality, NMFS believes it is unnecessary to remain at the site with vessels and aircraft for longer periods of time after completion of a test. Eglin AFB will coordinate its activities with the NMFS stranding network and with local stranding networks to locate any stranded marine mammals after an event. In addition, Eglin AFB maintains its own stranding network team. Stranding events are tracked by year, season and NMFS statistical zone, both Gulf-wide and along the coastline of Eglin AFB.

Activity Concerns

Comment 20: The GRN notes that in the event that a live warhead fails to explode during the strike, Eglin AFB will likely detonate the warhead where it fell to the bottom of the ocean. An underwater detonation creates a much larger chance of injury or death to all marine species, yet Eglin does not provide an adequate description of the level of potential impact to protected species taken under that scenario.

Response: The noise analysis was conservatively modeled by Eglin for 20 ft (6 m) below the surface in order to cover any water depth, including detonation on the sea bottom. There would be no difference in the noise zone of influence from what is modeled and mitigated from a 20–ft (6 m) depth detonation and a bottom detonation. However, the missile itself is programmed to lose power and will not detonate after 15 minutes. Therefore, it is safe to retrieve the missile after 15 minutes and they do not need to be detonated on-site.

Description of Marine Mammals Affected by the Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. Information on those species that may be impacted by this activity are discussed in the Eglin AFB application and the Draft EA. A summary of that information is provided in this section.

General information on these species can be found in Wursig *et al.* (2000. The Marine Mammals of the Gulf of Mexico, TAMU Press, College Station, TX) and in the NMFS Stock Assessment Reports (Waring, 2002). This latter document is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html#Stock Assessment Reports*

Marine mammal species that potentially occur within the EGTTR include several species of cetaceans and one sirenian, the West Indian manatee. During winter months, manatee distribution in the GOM is generally confined to southern Florida. During summer months, a few may migrate north as far as Louisiana. However, manatees primarily inhabit coastal and inshore waters and rarely venture offshore. PSW missions would be conducted offshore. Therefore, effects on manatees are considered very unlikely.

Cetacean abundance estimates for the study area are derived from GulfCet II (Davis *et al.*, 2000) aerial surveys of the continental shelf within the Minerals Management Service Eastern Planning Area, an area of 70,470 km^2. Texas A&M University and NMFS conducted these surveys from 1996 to 1998. Abundance and density data from the aerial survey portion of the survey best reflect the occurrence of cetaceans within the EGTTR, given that the survey area overlaps approximately one-third of the EGTTR and nearly the entire continental shelf region of the EGTTR where military activity is highest. The GulfCet II aerial surveys identified different density estimates of marine mammals for the shelf and slope geographic locations. Only the shelf data is used because PSW missions will only be conducted on the shelf.

In order to maximize species conservation and protection, the species density estimate data were adjusted to reflect more realistic encounters of these animals in their natural environment. Refer to ''*Conservative Estimates of Marine Mammal Densities*'' in this document and Eglin AFB's application for more information on density estimates. A brief description of each marine mammal species observed during GulfCet II aerial surveys on the shelf that has the potential to be present in the PSW test area is summarized here.

Atlantic Bottlenose Dolphins (Tursiops truncatus)

Bottlenose dolphins are distributed worldwide in tropical and temperate waters. In the GOM, several coastal and offshore stocks have been identified (see Waring et al. 2002) and one stock occurs in the inshore waters of the entire GOM. Waring *et al.* (2002) provides the following minimum population estimates for the GOM bottlenose dolphin stocks: outer shelf, 43,233; shelf and slope, 4,530; western Gulf, 2,938; northern Gulf, 3,518; eastern Gulf, 8,953; and Bay, Sound & Estuarine waters, 3,933. Baumgartner *et al.* (2001) suggest a bimodal distribution in the northern GOM, with a shelf population occurring out to the 150–m (492 ft) isobath and a shelf break population out to the 750–m (2461 ft) isobath. Occurrence in water with depth greater than 1,000 m (3281 ft) is not considered likely. Migratory patterns from inshore to offshore are likely associated with the movements of prey rather than a preference for a particular habitat characteristic (such as surface water temperature) (Ridgeway, 1972; Irving, 1973; Jefferson *et al.*, 1992).

The average herd or group size of Atlantic bottlenose dolphins in shelf and slope waters was approximately four and 10 individuals, respectively, per herd as determined by GulfCet II surveys of eastern Gulf waters (Davis *et al.*, 2000). The diet of Atlantic bottlenose dolphins consists mainly of fish, crabs, squid, and shrimp (Caldwell and Caldwell, 1983).

Atlantic Spotted Dolphins (Stenella frontalis)

Atlantic spotted dolphins are endemic to the tropical and warm temperate Atlantic Ocean. This species ranges from the latitude of Cape May, NJ, along mainland shores to Venezuela, including the GOM and Lesser Antilles (Caldwell and Caldwell, 1983). Sightings of this species are concentrated along the continental shelf and shelf edge (Fritts *et al.*, 1983), but they also occur farther offshore. At one time, Atlantic spotted dolphins were considered to be the most abundant species of dolphin in offshore waters (Schmidly, 1981), with most sightings occurring at an average of 168 km (90.7 nm) offshore. The best available abundance estimate for this species in the northern GOM is the combined estimate of abundance for both the OCS (39,307, CV=0.31) and oceanic (238, CV=0.87) waters from 1996 to 2001, which is 39,545 (CV=0.31)(NMFS, 2003).

The preferred depth of the spotted dolphin is believed to be associated with food availability and water temperature. The diet of the Atlantic spotted dolphin consists of squid and fish.

Dwarf Sperm Whales and Pygmy Sperm Whales

Dwarf sperm whales (*Kogia simus*) commonly inhabit the deeper offshore water, generally eating squid, crustaceans, and fish (Caldwell and Caldwell, 1983), but they do move into inshore waters during calving season. The pygmy sperm whale (*Kogia breviceps*) has a diet similar to that of the dwarf sperm whale. Both pygmy and dwarf sperm whales have been sighted in the northern GOM primarily along the continental shelf edge and in deeper shelf waters during all seasons except winter (Mullin *et al.*, 1994). The estimate of abundance for dwarf and pygmy sperm whales in oceanic waters is 809 (CV=0.33)(Mullin and Fulling, in prep), which is the best available abundance estimate for these species in the northern GOM. Separate estimates of abundance cannot be made due to uncertainty of species identification (NMFS, 2003). Dwarf and pygmy sperm whales have a high percentage of strandings relative to percent population of all cetaceans (Mullin *et al.*, 1994).

Impacts to Marine Mammals

Potential impacts to marine mammals from the detonation of the PSWs and SDBs include both lethal and non-lethal injury, as well as Level B behavioral harassment. Although unlikely due to the extensive mitigation measures proposed by Eglin AFB, marine mammals have the potential to be killed or injured as a result of a blast due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called ''cavitation.'' This is a region of near total physical trauma within which no animals would be expected to survive. A second criterion used by NMFS for categorizing taking by mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered to be debilitating and thereby potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves.

For the acoustic analysis, the exploding charge is characterized as a point source. The impact thresholds used for marine mammals relate to potential effects on hearing from underwater noise from detonations. For the explosives in question, actual detonation heights would range from 0 to 25 ft (7.6 m) above the water surface. Detonation depths would range from 0 to 80 ft (73.2 m) below the surface. To bracket the range of possibilities, detonation scenarios just above and below the surface were used to analyze bombs set to detonate on contact with the target barge. Potentially, the barge may interact with the propagation of noise into the water. However, barge effects on the propagation of noise into the water column cannot be determined without in-water noise monitoring at the time of detonation.

Potential exposure of a sensitive species to detonation noise could theoretically occur at the surface or at any number of depths with differing consequences. As a conservative measure a mid-depth scenario was selected to ensure the greatest direct path for the harassment ranges, and to give the greatest impact range for the injury thresholds.

Explosive Criteria and Thresholds for Impact of Noise on Marine Mammals

Criteria and thresholds that are the basis of the analysis of PSW noise impacts to cetaceans were initially used in U.S. Navy's environmental impact statements (EISs) for ship shock trials of the SEAWOLF submarine and the USS WINSTON S. CHURCHILL vessel (DON, 1998; DON, 2001) and accepted by NMFS as representing the best science available (see 66 FR 22450, May 4, 2001). With a single exception mentioned in this document, NMFS believes that the criteria developed for the shock trials represent the best science available. The following sections summarize the information contained in those actions.

Criteria and Thresholds: Lethality

The criterion for mortality for marine mammals used in the CHURCHILL Final EIS is 'onset of severe lung injury.' This is conservative in that it corresponds to a 1 percent chance of mortal injury, and yet any animal experiencing onset severe lung injury is counted as a lethal take. The threshold is stated in terms of the Goertner (1982) modified positive impulse with value ''indexed to 31 psi-ms.'' Since the Goertner approach depends on propagation, source/animal depths, and animal mass in a complex way, the actual impulse value corresponding to the 31–psi-ms index is a complicated calculation. The acoustic threshold is derived from:

$I_{1\%} = 42.9\ (M/34)^{1/3}$ psi-ms,

where M is animal mass in kg. Again, to be conservative, CHURCHILL used the mass of a calf dolphin (at 12.2 kg), so that the threshold index is 30.5 psi-ms.

Criteria and Thresholds: Injury (Level A Harassment)

Non-lethal injurious impacts are defined in this document as eardrum rupture (i.e., tympanic-membrane (TM) rupture) and the onset of slight lung injury. These are considered indicative of the onset of injury. The threshold for TM rupture corresponds to a 50 percent rate of rupture (i.e., 50 percent of animals exposed to the level are expected to suffer TM rupture); this is stated in terms of an EFD value of 1.17 in-lb/in^2, which is about 205 dB re 1 microPa^2–s. (Note: EFD is the time integral of the squared pressure divided by the impedance in values of dB re 1 microPa^2–s.) This recognizes that TM rupture is not necessarily a life-threatening injury, but is a useful index of possible injury that is well-correlated with measures of permanent hearing impairment (e.g., Ketten (1998) indicates a 30 percent incidence of permanent threshold shift (PTS) at the same threshold).

Criteria and Thresholds: Non-injurious Impacts (Level B Harassment)

Marine mammals may also be harassed due to noise from PSW missions involving high explosive detonations in the EGTTR. The CHURCHILL criterion for non-injurious harassment from detonations, as established through NMFS' incidental take rulemaking (see 66 FR 22450, May 4, 2001), is temporary (auditory) threshold shift (TTS), which is a slight, recoverable loss of hearing sensitivity (DoN, 2001). The criterion for TTS used in this document is 182 dB re 1 microPa^2–s maximum EFD level in any 1/3–octave band at frequencies above 100 Hz for all toothed whales (e.g., sperm whales, beaked whales, dolphins). (Note: 1/3–octave band is the EFD in a 1/3–octave frequency band; the 1/3 octave selected is the hearing range at which the affected species' hearing is believed to be most sensitive.) A 1/3–octave band above 10 Hz is used for impact assessments on all baleen whales, but those species do not inhabit the affected environment of this project.

The CHURCHILL rulemaking also established a second criterion for estimating TTS threshold: 12 psi. The appropriate application of this second TTS criterion is currently under debate, as this 12–psi criterion was originally established for estimating the impact of a 10,000–lb (4536–kg) explosive to be employed for the Navy's shock trial. It was introduced to provide a more conservative safety zone for TTS when the explosive or the animal approaches the sea surface (for which cases the explosive energy is reduced but the peak pressure is not).

For large explosives (2000 to 10,000 lbs (907–4536 kg)) and explosives/animals not too close to the surface, the TTS impact zones for these two TTS criteria are approximately the same. However, for small detonations, some acousticians contend the ranges for the two TTS thresholds may be quite different, with ranges for the peak pressure threshold several times greater than those for energy. In its application, Eglin AFB endorsed an approach, currently being developed by the Navy, for appropriately ''scaling'' the peak pressure threshold, in order to more accurately estimate TTS for small shots while preserving the safety feature provided by the peak pressure threshold. As such, in its application, Eglin AFB requested the energy-based criterion for TTS, 182 dB re 1 microPa2–s (maximum EFD level in any 1/3–octave band), be used alone to conservatively estimate the zone in which non-injurious (Level B) harassment of marine mammals may occur.

NMFS acousticians have reviewed the scientific basis for this proposal and agree, in part, with the statements made by Eglin AFB that the pressure criterion of 12 psi is not fully supportable for small charges or when either the charge or the recipient are at the surface. The model used in CHURCHILL assumed the detonation occurred in deep water with the charge placed below 318 ft (100 m) in depth, and that the bottom depth is at least 20 times the detonation depth. In contrast, in PSW missions, both the detonation and the recipient will be near the surface in relatively shallow water. Therefore, although this issue remains under review by NMFS and the Navy for future rulemaking actions, as an interim criterion for this IHA, NMFS is adopting the experimental findings of Finneran et al. (2002) that TTS can be induced at a pressure level of 23 psi (at least in belugas). As explained here, this is considered conservative since a 23–psi pressure level was below the level that induced TTS in bottlenose dolphins.

Finneran *et al.* (2000; as described in Finneran *et al.* (2002)) conducted a study designed to measure MTTS in bottlenose dolphins and belugas exposed to single underwater impulses. This study used an ''explosion simulator'' (ES) to generate impulsive sounds with pressure waveforms resembling those produced by distant underwater explosions. No substantial (i.e., 6 dB or larger) threshold shifts were observed in any of the subjects (two bottlenose dolphins and 1 beluga) at the highest received level produced by the ES: approximately 70 kPa (10 psi) peak pressure, 221 dB re re 1 micro Pa peak-to-peak (pk-pk) pressure, and 179 dB re 1 microPa^2–s total EFD. In Finneran *et al.* (2002), a watergun was substituted for the ES because it is capable of producing impulses with higher peak pressures and total energy fluxes than the pressure waveforms produced using the ES. It was also preferable to other seismic sources because its impulses contain more energy at higher frequencies, where odontocete hearing thresholds are relatively low (i.e., more sensitive). Hearing thresholds were measured at 0.4, 4 and 30 kHz. MTTSs of 7 and 6 dB were observed in the beluga at 0.4 and 30 kHz, respectively, approximately 2 minutes following exposure to single impulses with peak pressures of 160 kPa (23 psi), pk-pk pressures of 226 dB re 1 microPa, and total EFD of 186 dB re 1 microPa^2–s. Thresholds returned to within 2 dB of the pre-exposure value approximately 4 minutes post exposure. No MTTS was observed in the single bottlenose dolphin tested at the highest exposure conditions: peak pressure of 207 kPa (30 psi), 228 dB re 1 microPa pk-pk pressure, and 188 dB re 1 microPa^2–s total energy flux. Therefore, until more scientific information is obtained, NMFS has determined that the pressure criterion for small explosions can be amended from 12 psi to 23 psi. At this time, NMFS believes that setting the pressure metric of the dual explosive criteria at 23 psi is conservative, while setting the pressure metric at a higher level has not been scientifically validated at this time. Table 2 illustrates estimated zones of impact for potential mortality, injury and TTS.

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Table 2. Zones of Impact for Underwater Explosions (Mid-depth Animal).

Ordnance	NEW (TNT in lb)	Depth or Height of Explosion (m)	Ranges for 31 psi (m)	Ranges for EFDL > 205 dB (m)	Ranges for 182 dB EFDL in 1/3-Octave Band/ 12 psi (m)*
Summer					
Single SDB	48	1.5	n/a	12	447
		7.6	n/a	12	447
Double SDB	96	1.5	n/a	16	550
		7.6	n/a	17	550
Single JASSM	300	0.3	75	170	770
		>6.1	320	550	2490
Winter					
Single SDB	48	1.5	n/a	12	471
		7.6	n/a	12	471
Double SDB	96	1.5	n/a	16	594
		7.6	n/a	16	594
Single JASSM	300	0.3	75	170	871
		>6.1	320	590	3250

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Criteria and Thresholds: Behavioral Modification (Sub-TTS)

No strictly sub-TTS behavioral responses (i.e., Level B harassment) are anticipated with the JASSM and SBD test activities because there are no successive detonations (the 2 SBD explosions occur almost simultaneously) which could provide causation for a behavioral disruption rising to the level of a significant alteration or abandonment of behavioral patterns without also causing TTS. Also, repetitive exposures (below TTS) to the same resident animals are highly unlikely due to the infrequent JASSM and SBD test events, the potential variability in target locations, and the continuous movement of marine mammals in the northern GOM.

Incidental Take Estimation

For Eglin AFB's PSW exercises, three key sources of information are necessary for estimating potential take levels from noise on marine mammals: (1) The zone of influence (ZOI) for noise exposure; (2) The number of distinct firing or test events; and (3) the density of animals that potentially reside within the ZOI.

Noise ZOIs were calculated for depth detonation scenarios of 1 ft (0.3 m) and 20 ft (6.1 m) for lethality and for harassment (both Level A and Level B). To estimate the number of potential ''takes'' or animals affected, the adjusted data on cetacean population information from ship and aerial surveys were applied to the various impact zones.

Table 2 in this document give the estimated impact ranges for various explosive weights for summer and wintertime scenarios for JASSM and SDB. For example, the JASSM, the range, in winter, extends to 320 m (1050 ft), 590 m (1936 ft) and 3250 m (10663 ft) for potential mortality (31 psi-ms), injury (205 dB re 1 microPa^2–s) and TTS (182 dB re 1 microPa^2–s/23 psi) zones, respectively. SDB scenarios are for in-air detonations at heights of 1.5 m (5 ft) and 7.6 m (25 ft) during both seasons. JASSM detonations were modeled for near surface (i.e., 1–ft (0.3–m) depth) and below surface (>20–ft depth (> 6.1 m)). To account for ''double'' (2 nearly simultaneous) events, the charge weights are added (doubled) when modeling for the determination of energy estimates (since energy is proportional to weight). Pressure estimates only utilize the single charge weights for these estimates.

Applying the lethality (31 psi) and harassment (182 and 205 dB) impact ranges in Eglin AFB's Table 2 to the calculated species densities, the number of animals potentially occurring within the ZOIs without implementation of mitigation was estimated. These results are presented in Tables 3, 4, and 5 in this document. In summary, without any mitigation, a remote possibility exists for a bottlenose and an Atlantic spotted dolphins to be exposed to blast levels sufficient to cause mortality. Additionally, less than 2 cetaceans could be exposed to injurious Level A harassment noise levels (205 dB re 1 microPa^2–s), and as few as 31 or as many as 52 cetaceans (depending on the season and water depth) would potentially be exposed (annually) to a non-injurious (TTS) Level B harassment noise level (182 dB re 1 microPa^2–s). None of these impact estimates consider mitigation measures that will be employed by Eglin AFB to minimize potential impacts to protected species. These mitigation measures are described elsewhere in this document and are anticipated to reduce potential impacts to marine mammals, in both numbers and degree of severity.

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Table 3. Marine Mammal Densities and Risk Estimates for Lethality (31 psi) Noise Exposure for All In-Water and In-Air Detonations

Species	Density	Number of Animals Exposed from All In-Air and In-Water Detonations	Adjusted Number Exposed Based on 30% Mitigation Effectiveness
Summer			
Dwarf/pygmy sperm whale	0.013	0.004	0.003
Bottlenose dolphin	0.81	0.262	0.183
Atlantic spotted dolphin	0.677	0.219	0.153
T. truncatus/S. frontalis	0.053	0.017	0.012
TOTAL		**0.502**	**0.351**
Winter			
Dwarf/pygmy sperm whale	0.013	0.004	0.003
Bottlenose dolphin	0.81	0.262	0.183
Atlantic spotted dolphin	0.677	0.219	0.153
T. truncatus/S. frontalis	0.053	0.017	0.012
TOTAL		**0.502**	**0.351**

Table 4. Marine Mammal Densities and Risk Estimates for Level A Harassment (205 dB EFD 1/3-Octave Band) Noise Exposure for All In-Water and In-Air Detonations

Species	Density	Number of Animals Exposed from All In-Air and In-Water Detonations	Adjusted Number Exposed Based on 30% Mitigation Effectiveness
Summer			
Dwarf/pygmy sperm whale	0.013	0.014	0.010
Bottlenose dolphin	0.81	0.893	0.625
Atlantic spotted dolphin	0.677	0.747	0.523
T. truncatus/S. frontalis	0.053	0.058	0.041
TOTAL		**1.712**	**1.198**

Winter			
Dwarf/pygmy sperm whale	0.013	0.014	0.010
Bottlenose dolphin	0.81	0.893	0.625
Atlantic spotted dolphin	0.677	0.747	0.523
T. truncatus/S. frontalis	0.053	0.058	0.041
TOTAL		**1.712**	**1.198**

Table 5. Marine Mammal Densities and Combined Risk Estimates for the 23 psi Peak Pressure and the 182 dB EFD 1/3-Octave Band Level B Harassment Metrics for All In-Water and In-Air Detonations

Species	Density	Number of Animals Exposed from In-Air and In-Water Detonations	Adjusted Number Exposed Based on 30% Mitigation Effectiveness
Summer			
Dwarf/pygmy sperm whale	0.013	0.26	0.182
Bottlenose dolphin	0.81	16.209	11.3463
Atlantic spotted dolphin	0.677	13.547	9.4829
T. truncatus/S. frontalis	0.053	1.061	0.7427
TOTAL		**31.076**	**21.7532**
Winter			
Dwarf/pygmy sperm whale	0.013	0.44	0.308
Bottlenose dolphin	0.81	27.387	19.1709
Atlantic spotted dolphin	0.677	22.89	16.023
T. truncatus/S. frontalis	0.053	1.792	1.2544
TOTAL		**52.509**	**36.7563**

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Mitigation and Monitoring

Eglin will survey the Zone of Influence (ZOI) and a buffer zone around a planned detonation site. The buffer zone will be twice the size of the ZOI. Prior to the planned detonation, trained observers aboard aircraft will survey (visually monitor) the ZOI and buffer area, a very effective method for detecting sea turtles and cetaceans. The aircraft/helicopters will fly approximately 500 ft (152 m) above the sea surface to allow observers to scan a large distance. In addition, trained observers aboard surface support vessels will conduct ship-based monitoring for non-participating vessels as well as protected species. Using 25X power ''Big-eye'' binoculars, surface observation would be effective out to several kilometers.

Weather that supports the ability to sight small marine life (e.g., sea turtles) is required to effectively mitigate impacts on marine life (DON, 1998). Wind, visibility, and surface conditions in the GOM are the most critical factors affecting mitigation operations. Higher winds typically increase wave height and create ''white cap'' conditions, both of which limit an observer's ability to locate surfacing marine mammals and sea turtles. PSW missions would be delayed if the Beaufort scale sea state are greater than 3.5. This would maximize detection of marine mammals and sea turtles.

Visibility is also a critical factor for flight safety issues. A minimum ceiling of 305 m (1000 ft) and visibility of 5.6 km (3 nm) is required to support mitigation and safety-of-flight concerns (DON, 2001).

Aerial Survey/Monitoring Team

Eglin will complete an aerial survey before each mission and train personnel to conduct aerial surveys for protected species. The aerial survey/monitoring team would consist of two observers. Aircraft provides a preferable viewing platform for detection of protected marine species. Each aerial observer will be experienced in marine mammal and sea turtle surveying and be familiar with species that may occur in the area. Each aircraft would have a data recorder who would be responsible for relaying the location, the species if possible, the direction of movement, and the number of animals sighted. The aerial monitoring team would also identify large schools of fish, jellyfish aggregations, and any large accumulation of *Sargassum* that could potentially drift into the ZOI. Standard line transect aerial surveying methods, as developed by NMFS (Blaylock and

Hoggard, 1994; Buckland *et al.*, 1993) would be used. Aerial observers are expected to have above average to excellent sighting conditions at sunrise to 1.85 km (1 nm) on either side of the aircraft within the weather limitation noted previously. Observed marine mammals and sea turtles would be identified to the species or the lowest possible taxonomic level and the relative position recorded. In order to ensure adequate daylight for pre- and post-mission monitoring, the mission activity would occur no earlier than 2 hours after sunrise and no later than 2 hours prior to sunset.

Shipboard Monitoring Team

Eglin AFB will conduct shipboard monitoring to reduce impacts to protected species. The monitoring would be staged from the highest point possible on a mission ship. Observers would be familiar with the marine life of the area. The observer on the vessel must be equipped with optical equipment with sufficient magnification (e.g., 25X power ''Big-Eye'' binoculars, as these have been successfully used in monitoring activities from ships), which should allow the observer to sight surfacing mammals from as far as 11.6 km (6.3 nm) and provide overlapping coverage from the aerial team. A team leader would be responsible for reporting sighting locations, which would be based on bearing and distance.

The aerial and shipboard monitoring teams will have proper lines of communication to avoid communication deficiencies. The observers from the aerial team and operations vessel will have direct communication with the lead scientist aboard the operations vessel. The lead scientist will be a qualified marine biologist familiar with marine surveys. The lead scientist reviews the range conditions and recommends a Go/No-Go decision to the test director. The test director makes the final Go/No-Go decision.

Mitigation Procedures Plan

All zones (injury, ZOI and buffer zones) are monitored. Although unexpected, any mission may be delayed or aborted due to technical reasons. Actual delay times depend on the aircraft supporting the test, test assets, and range time. Should a technical delay occur, all mitigation procedures would continue and remain in place until either the test takes place or is canceled. The ZOI and buffer zone around JASSM missions will be effectively monitored by shipboard observers from the highest point of the vessel. Vessels will be positioned as close to the safety zone as allowed without infringing on the missile flight corridor. The SDB has many mission profiles and does not have a flight termination system; therefore, the safety buffer may be quite large (5–10 nm radius (9.3–18.5 km)).

PSW mitigation must be regulated by Air Force safety parameters (pers. comm. Monteith and Nowers, 2004) to ensure personnel safety. Therefore, mitigation effectiveness may be reduced for some missions due to mandatory safety buffers which limit the time and type of mitigation. Even though mitigation may be limited for SDB missions, all detonations are above the water surface (5–25 ft (1.5–7.6 m) above the surface) and of much smaller net explosive weight than JASSM. Table 6 describes safety zones and clearance times for JASSM and SDB missions (time in minutes).

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Table 6. Safety Zone Monitoring Time Frames and Effectiveness

	Flight Time	Safety Clearance Time for Vessels before Launch	Safety Clearance Time for Aircraft before Launch	Total Time of Vessel Safety Clearance before Detonation	Total Time of Aircraft Safety Clearance before Detonation	Safety Area
JASSM	:30 – 1 hr	:30	:15	1:30	1:15	2 NM
SDB	:20	:60	:30	1:20	:50	5-10 NM

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Stepwise mitigation and monitoring procedures for PSW missions are outlined here.

Pre-mission Monitoring

The purposes of pre-mission monitoring are to (1) evaluate the test site for environmental suitability of the mission (e.g., relatively low numbers of marine mammals and turtles, few or no patches of *Sargassum*, etc.) and (2) verify that the ZOI is free of visually detectable marine mammals, sea turtles, large schools of fish, large flocks of birds, large *Sargassum* mats, and large concentrations of jellyfish (both are possible indicators of turtle presence). On the morning of the test, the lead scientist would confirm that the test sites can still support the mission and that the weather is adequate to support mitigation.

Five Hours Prior to Mission:

Approximately 5 hours prior to the mission, or at daybreak, the appropriate vessel(s) would be on-site in the primary test site near the location of the earliest planned mission point. Observers onboard the vessel will assess the suitability of the test site, based on visual observation of marine mammals and sea turtles, the presence of large *Sargassum* mats, and overall environmental conditions (visibility, sea state, etc.). This information will be relayed to the lead scientist.

Two Hours Prior to Mission:

Two hours prior to the mission, aerial monitoring would commence within the test site to evaluate the test site for environmental suitability. Evaluation of the entire test site would take approximately 1 to 1.5 hours. Shipboard observers would monitor the ZOI and buffer zone, and the lead scientist would enter all marine mammals and sea turtle sightings, including the time of sighting and the direction of travel, into a marine animal tracking and sighting database. The aerial monitoring team would begin monitoring the ZOI and buffer zone around the target area. The shipboard monitoring team would combine with the aerial team to monitor the area immediately around the

mission area including both the ZOI and buffer zone.

One to 1.5 Hours Prior to Launch

As noted in Table 6 and depending upon the mission, aerial and shipboard viewers would be instructed to leave the area and remain outside the safety area (over 2 nm (3.7 km) from impact for JASSM and 5–10 nm (9.3–18.5 km) for SDB). The aerial team would report all marine animals spotted and the directions of travel to the lead scientist onboard the vessel. The shipboard monitoring team would continue searching the buffer zone for protected species as it leaves. The aircraft will leave the area and land on base. The surface vessels will stay on the outside of the safety area until after impact (5–10 nm for SDB and 2 nm for JASSM).

Fifteen Minutes Prior to Launch and Go/No-Go Decision Process

Visual monitoring from surface vessels outside the safety zone would continue to document any animals that may have gone undetected during the past two hours and track animals moving in the direction of the impact area.

The lead scientist would plot and record sightings and bearing for all marine animals detected. This would depict animal sightings relative to the mission area. The lead scientist would have the authority to declare the range fouled and recommend a hold until monitoring indicates that the ZOI is and will remain clear of detectable animals.

As indicated in the previous table, the ZOI (for preventing TTS (182 dB re 1 microPa^2–s/23 psi)) is estimated for the specific charge weight being used, the depth of blast, and the season. The mission would be postponed if:

(1) Any marine mammal or sea turtle is visually detected within the ZOI prior to mission launch. The delay would continue until the marine mammal or sea turtle that caused the postponement is confirmed to be outside of the ZOI due to the animal swimming out of the range.

(2) Any marine mammal or sea turtle is detected in the buffer zone and subsequently cannot be reacquired. The mission would not continue until the last verified location is outside of the ZOI and the animal is moving away from the mission area.

(3) Large *Sargassum* rafts or large concentrations of jellyfish are observed within the ZOI. The delay would continue until the *Sargassum* rafts or jellyfish that caused the postponement are confirmed to be outside of the ZOI due to either the current and/or wind moving them out of the mission area.

(4) Large schools of fish are observed in the water within the ZOI. The delay would continue until the large fish schools are confirmed to be outside the ZOI.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. Aerial monitoring is limited by fuel and the on-station time of the monitoring aircraft. If a live warhead failed to explode operations would attempt to recognize and solve the problem while continuing with all mitigation measures in place. The probability of this occurring is very remote but does exist. Should a weapon fail to explode, the activity sponsor would attempt to identify the problem and detonate the charge with all marine mammal and sea turtle mitigation measures in place as described. If a live warhead fails to explode the weapon is rendered safe after 15 minutes. The feasibility and practicality of recovering the warhead will be evaluated on a case-by-case basis. If at all feasible, the warhead will be recovered.

It should be noted that for economic (costs of testing $2 million per test) and practical (in-air destruction of the missile) reasons, Eglin AFB will not be required to terminate an in-flight missile or bomb due to sighting of a protected species.

Launch to Impact

Visual monitoring from vessels would continue to survey the ZOI and surrounding buffer zone and track animals moving in the direction of the impact area. The lead scientist would continue to plot and record sightings and bearing for all marine animals detected. This will depict animal sightings relative to the impact area.

Post-mission monitoring

Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals or sea turtles. Post-detonation monitoring via shipboard surveyors would commence immediately following each detonation; no aerial surveys would be conducted during this monitoring stage. The vessels will move into the ZOI from outside the safety zone and continue monitoring for at least two hours, concentrating on the area down current of the test site.

Although it is highly unlikely that marine mammals or sea turtles would be killed or seriously injured by this activity, marine mammals or sea turtles killed by an explosion would likely suffer lung rupture, which would cause them to float to the surface immediately due to air in the blood stream. Animals that were not killed instantly but were mortally wounded would likely resurface within a few days, though this would depend on the size and type of animal, fat stores, depth, and water temperature (DON, 2001). The monitoring team would attempt to document any marine mammals or turtles that were killed or injured as a result of the test and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the observation teams would be documented and reported to the lead scientist.

Post-mission monitoring activities include coordination with marine animal stranding networks. NMFS maintains stranding networks along coasts to collect and circulate information about marine mammal and sea turtle standings. Local coordinators report stranding data to state and regional coordinators. Any observed dead or injured marine mammal or sea turtle would be reported to the appropriate coordinator.

Summary of Mitigation Plan

The PSW test will be postponed if any human safety concerns arise, protected species are sighted within the ZOI, any protected species is detected in the buffer zone and subsequently cannot be reacquired, or a protected species is moving into the ZOI from the buffer zone. PSW testing would be delayed if definitive indicators of protective species (i.e., large *Sargassum* mats) were present. The delay would continue until the marine mammal, sea turtle, and/or indicators that caused the postponement is confirmed to be outside of the ZOI due to the animal swimming out of the range.

Avoidance of impacts to pods of cetaceans will most likely be realized through these measures since groups of dolphins are relatively easy to spot with the survey distances and methods that will be employed. Typically solitary marine mammals such as dwarf/pygmy sperm whales and sea turtles, while more challenging to detect, will also be afforded substantial protection through pre-test monitoring.

The safety vessels would conduct post-mission monitoring for two hours after each mission. The monitoring team would attempt to document any marine mammals or turtles that were killed or injured as a result of the test and, if practicable, recover and examine any dead animals.

Hard-bottom habitats and artificial reefs will be avoided to alleviate any potential impacts to protected habitat. PSW testing will be delayed if large Sargassum mats are found in the ZOI.

Testing will resume only when the mats move outside of the largest ZOI.

Conservative Estimates of Marine Mammal Densities

By using conservative mathematic calculations, conservative density estimates can serve as a respectable mitigation technique for take estimates. Marine mammal densities used to calculate takes were based on the most current and comprehensive GOM surveys available (GulfCet II). The densities are adjusted for the time the animals are submerged, and further adjusted by applying standard deviations to provide an approximately 99 percent confidence level. As an example, the density estimates for bottlenose dolphins range from 0.06 to 0.15 animals/km^2 in GulfCet II aerial surveys of the shelf and slope. However, the final adjusted density used in take calculations is 0.81 animals/km^2.

Reporting

NMFS will require Eglin AFB to submit an annual report on the results of the monitoring requirements. This annual report will be due within 120 days of the expiration of the IHA. This report will include a discussion on the effectiveness of the mitigation in addition to the following information: (1) date and time of each of the detonations; (2) a detailed description of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammals and their populations; (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonations and numbers that may have been harassed due to undetected presence within the safety zone; and (4) results of coordination with coastal marine mammal/sea turtle stranding networks.

Research

Although Eglin AFB does not currently conduct independent Air Force monitoring efforts, Eglin AFB's Natural Resources Branch does participate in marine animal tagging and monitoring programs lead by other agencies. Additionally, the Natural Resources Branch also supports participation in annual surveys of marine mammals in the GOM with NOAA Fisheries. From 1999 to 2002, Eglin AFB's Natural Resources Branch has, through a contract representative, participated in summer cetacean monitoring and research opportunities. The contractor participated in visual surveys in 1999 for cetaceans in GOM, photographic identification of sperm whales in the northeastern Gulf in 2001, and as a visual observer during the 2000 Sperm Whale Pilot Study and the 2002 sperm whale Satellite-tag (S-tag) cruise. Support for these research efforts is anticipated to continue.

Eglin AFB conducts other research efforts that utilize marine mammal stranding information as a means of ascertaining the effectiveness of mitigation techniques. Stranding data is collected and maintained for the Florida panhandle and Gulf-wide areas. This is undertaken through the establishment and maintenance of contacts with local, state, and regional stranding networks. Eglin AFB assists with stranding data collection by maintaining its own team of stranding personnel. In addition to simply collecting stranding data, various analyses are performed. Stranding events are tracked by year, season, and NOAA Fisheries statistical zone, both Gulf-wide and on the coastline in proximity to Eglin AFB. Stranding data is combined with records of EGTTR mission activity in each water range and analyzed for any possible correlation. In addition to being used as a measure of the effectiveness of mission mitigation, stranding data can yield insight into the species composition of cetaceans in the region.

Endangered Species Act (ESA)

NMFS has issued a biological opinion regarding the effects of this action on ESA-listed species and critical habitat under the jurisdiction of NMFS. That biological opinion concluded that this action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

National Environmental Policy Act (NEPA)

In December, 2003, Eglin AFB released a Draft EA on this proposed activity. On April 22, 2004 (69 FR 21816), NMFS noted that Eglin AFB had prepared an EA for PSW activities and made this EA was available upon request. Eglin AFB has updated that draft EA.

In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in Eglin's draft Final EA and determined that the Eglin AFB EA accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Based on this review and analysis, NMFS is adopting Eglin's EA under 40 CFR 1506.3 and has made its own FONSI. Therefore, NMFS has determined it is not necessary to issue a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to Eglin AFB for this activity. A copy of NMFS' FONSI for this activity is available upon request (see **ADDRESSES**). A copy of the Eglin AFB EA for this activity is available by contacting either Eglin AFB or NMFS (see **ADDRESSES**).

Determinations

NMFS has determined that this action is expected to have a negligible impact on the affected species or stocks of marine mammals in the GOM. No take by serious injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. The information contained in Eglin's EA and incidental take application support NMFS' finding that impacts will be mitigated by implementation of a conservative safety range for marine mammal exclusion, incorporation of aerial and shipboard survey monitoring efforts in the program both prior to, and after, detonation of explosives, and delay/postponement/cancellation of detonations whenever marine mammals are either detected within the safety zone or may enter the safety zone at the time of detonation or if weather and sea conditions preclude adequate aerial surveillance. Since the taking will not result in more than the incidental harassment of certain species of marine mammals, will have only a negligible impact on these stocks, will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and, through implementation of required mitigation and monitoring measures, will result in the least practicable adverse impact on the affected marine mammal stocks, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the IHA can be issued.

Authorization

NMFS has issued an IHA to take marine mammals, by harassment, incidental to testing and training during Precision Strike Weapons (PSW) tests in the Gulf of Mexico for a 1–year period, provided the mitigation, monitoring,

and reporting requirements described in this document and the IHA are undertaken.

Dated: August 11, 2005.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–16390 Filed 8–18–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice; Meeting of the Independent Review Panel To Study the Relationships Between Military Department General Counsels and Judge Advocates General—Open Meeting

AGENCY: Department of Defense.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 96–463, notice is hereby given that the Independent Review Panel to Study the Relationships between Military Department General Counsels and Judge Advocates General will hold an open meeting at the Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, Virginia 22202, on August 29, 2005, if needed, from 8:30 a.m. to 11:30 a.m. and 1 p.m. to 4 p.m.

DATES: August 29, 2005: 8:30 a.m.–11:30 a.m., and 1 p.m.–4 p.m.

ADDRESSES: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington,Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting may contact: Mr. James R. Schwenk, Designated Federal Official, Department of Defense Office of the General Counsel, 1600 Defense Pentagon, Arlington, Virginia 20301–1600, Telephone: (703) 697–9343, Fax: (703) 693–7616, *schwenkj@dodgc.osd.mil.*

SUPPLEMENTARY INFORMATION: The Panel will meet on August 29, 2005, from 8:30 a.m. to 11:30 a.m. and 1 p.m. to 4 p.m., if needed, to conduct deliberations concerning the relationships between the legal elements of their respective Military Departments. These sessions will be open to the public, subject to the availability of space. The Panel has held eight public hearings and has provided the public opportunities to address the Panel both in person and in writing. The Panel has also deliberated in several sessions open to the public, including deliberations on an initial draft of a final report prepared by the Panel's staff. The Panel must complete its report during August so that Congress may consider it during this legislative session as envisioned in section 574 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Due to this exceptional circumstance, the Panel decided to hold its final deliberation session, if needed, open to the public, on August 29. This decision, based on that exceptional circumstance, was made on August 12, thus making it impossible for the Department to provide the 15 calendar days notice normally required for Panel meetings. On August 12, the Panel completed deliberations necessary for the staff to prepare a final report. If, after reviewing the final report prepared by the staff, any member of the Panel believes that additional deliberations are necessary, the meeting on August 29 will occur. If all Panel members believe that the final report prepared by the staff properly addresses all issues and no additional deliberations are necessary, there will not be a meeting on August 29. Please call the Designated Federal Official at the number listed below for additional information including whether the meeting scheduled for August 29 will be held.

Dated: August 16, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–16505 Filed 8–16–05; 3:25 pm]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–402–000]

Columbia Gas Storage, LLC; Notice of Petition

August 12, 2005.

Take notice that on August 9, 2005, Columbia Gas Storage, 20333 State Highway 249, Suite 400, Houston, TX 77070, filed a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(5)), and section 7(c)(1)(B) of the Natural Gas Act (15 U.S.C. 717(c)(1)(B)), seeking approval of an exemption from certificate requirements to perform temporary activities related to drilling a test well and performing other activities to assess the feasibility of developing an underground natural gas storage facility in Benton County, Washington, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–3676 or TYY, (202) 502–8659.

Any questions regarding the petition should be directed to Joseph H. Fagan, Heller Ehrman LLP, 1717 Rhode Island Ave., NW., Washington, DC 20036–3001 and Phone: 202–912–2162; Fax 202–912–2020.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: 5 p.m. eastern time on August 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4517 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2601]

Duke Power, a Division of Duke Energy Corporation Nantahala Area; Notice of Authorization for Continued Project Operation

August 12, 2005.

On July 22, 2003, Duke Power, a division of Duke Energy Corporation, Nantahala Area, licensee for the Bryson Project No. 2601, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2601 is located on the Oconaluftee River in Swain County, North Carolina.

The license for Project No. 2601 was issued for a period ending July 31, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2601 is issued to Duke Power, a division of Duke Energy Corporation, Nantahala Area for a period effective August 1, 2005 through July 31, 2006, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before August 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Duke Power, a division of Duke Energy Corporation, Nantahala Area is authorized to continue operation of the Bryson Project No. 2601 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4523 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2603]

Duke Power, a Division of Duke Energy Corporation Nantahala Area; Notice of Authorization for Continued Project Operation

August 12, 2005.

On July 22, 2003, Duke Power, a division of Duke Energy Corporation, Nantahala Area, licensee for the Franklin Project No. 2603, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. Project No. 2603 is located on the Little Tennessee River in Macon County, North Carolina.

The license for Project No. 2603 was issued for a period ending July 31, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2603 is issued to Duke Power, a division of Duke Energy Corporation, Nantahala Area for a period effective August 1, 2005 through July 31, 2006, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before August 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Duke Power, a division of Duke Energy Corporation, Nantahala Area is authorized to continue operation of the Franklin Project No. 2603 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4524 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2619]

Duke Power, a Division of Duke Energy Corporation, Nantahala Area; Notice of Authorization for Continued Project Operation

August 12, 2005.

On July 22, 2003, Duke Power, a division of Duke Energy Corporation,

Nantahala Area, licensee for the Mission Project No. 2619, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. Project No. 2619 is located on the Hiwassee River in Clay County, North Carolina.

The license for Project No. 2619 was issued for a period ending July 31, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2619 is issued to Duke Power, a division of Duke Energy Corporation, Nantahala Area for a period effective August 1, 2005 through July 31, 2006, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before August 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Duke Power, a division of Duke Energy Corporation, Nantahala Area is authorized to continue operation of the Mission Project No. 2619 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4525 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–16–000]

Grama Ridge Storage and Transportation, LLC; Notice of Petition for Rate Approval

August 12, 2005.

Take notice that on July 29, 2005, Grama Ridge Storage and Transportation, LLC (Grama) filed a petition for rate approval of market-based rates for storage and hub services pursuant to section 284.123Co)(2) of the Commission's Regulations. Grama requests that the Commission authorize Grama to continue to charge market-based rates for its storage services, as well as authorize Grama to charge market-based rates for its proposed interruptible hub services, pursuant to section 311 of the Natural Gas Policy Act of 1978.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the date as indicated below. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call 1–866–208–3676 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: 5 p.m. eastern time September 1, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4527 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1971]

Idaho Power Company; Notice of Authorization for Continued Project Operation

August 12, 2005.

On July 21, 2003, Idaho Power Company, licensee for the Hells Canyon Project No. 1971, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1971 is located on the Snake River in Adams and Washington Counties, Idaho and Wallowa, Malheur, and Baker Counties, Oregon.

The license for Project No. 1971 was issued for a period ending July 31, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 1971 is issued to Idaho Power Company for a period effective August 1, 2005 through July 31, 2006, or until the issuance of a new license for the project

or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before August 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Idaho Power Company is authorized to continue operation of the Hells Canyon Project No. 1971 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4522 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–953–000, ER05–953–001]

Phelps Dodge Power Marketing, LLC; Notice of Issuance of Order

August 12, 2005.

Phelps Dodge Power Marketing, LLC (Phelps Marketing) filed an application, as amended, for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity and energy at market-based rates. Phelps Marketing also requested waiver of various Commission regulations. In particular, Phelps Marketing requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Phelps Marketing.

On August 12, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Phelps Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is September 12, 2005.

Absent a request to be heard in opposition by the deadline above, Phelps Marketing is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Phelps Marketing, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Phelps Marketing's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4519 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES05–37–000; ES05–38–000; ES05–39–000]

PSEG Energy Resources & Trade LLC, PSEG Fossil LLC, PSEG Nuclear LLC; Notice of Application

August 12, 2005.

Take notice that on August 4, 2005, PSEG Energy Resources & Trade LLC, PSEG Fossil LLC, and PSEG Nuclear LLC (the PSEG Power Companies) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to have outstanding short-term, unsecured debt in an amount not to exceed $2 billion outstanding at any one time.

PSEG Power Companies also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

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 on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant on or before the comment date. It is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 1, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4520 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–396–000]

Sabine Pass LNG, L.P.; Notice of Application

August 12, 2005.

Take notice that on July 29, 2005, Sabine Pass LNG, L.P. (Sabine LNG), 717 Texas Avenue, Suite 3100, Houston, Texas 77002 filed in Docket No. CP05–396–000 an application seeking authorization, pursuant to section 3(a) of the Natural Gas Act and parts 153 and 380 of the Commission's regulations, to site, construct and operate additional liquefied natural gas (LNG) import facilities in Cameron Parish, Louisiana. Sabine LNG supplemented this application on August 8, 2005. Development of these additional LNG facilities constitutes Sabine Pass LNG's Phase 2 Project, and includes three additional LNG storage tanks and new and expanded vaporization systems. The Phase 2 Project facilities will complement the Phase 1 Project authorized by the Commission on December 21, 2004, in Docket No. CP04–47–000 and for which construction is currently underway.

This application is on file with the Commission and open to public inspection. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact *FERC Online Support at FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. Any initial questions regarding these applications should be directed to Keith M. Meyer, 717 Texas Avenue, Suite 3100, Houston, Texas 77002. Phone: (713) 659–1361, Fax (713) 659–5459.

Sabine Pass LNG has provided the minimal amount of cultural resources information necessary for staff to begin the traditional scoping process under the National Environmental Policy Act (NEPA). For projects such as this one that use the traditional authorization process, a Draft Environmental Impact Statement (DEIS) is typically issued for public comment about 8 to 10 months from the filing date of the application. However, the Commission staff can complete and issue the DEIS only after the remaining cultural resources information is submitted.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; *see,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. eastern time on September 2, 2005.

Magalie Salas,

Secretary.

[FR Doc. E5–4528 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–105–000, et al.]

La Paloma Acquisition Co, LLC, et al.; Electric Rate and Corporate Filings

August 12, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. La Paloma Acquisition Co, LLC

[Docket No. EC05–105–000]

Take notice that on August 4, 2005, La Paloma Acquisition Co, LLC and Morgan Stanley & Co. Incorporated tendered for filing a withdrawal of the joint application filed July 15, 2005 in the above-referenced proceeding.

Comment Date: 5 p.m. eastern time on September 2, 2005.

2. Baja California Power, Inc.

[Docket No. EG05–89–000]

Take notice that on August 4, 2005, Baja California Power, Inc. filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment Date: 5 p.m. eastern time on August 25, 2005.

3. Louisiana Generating LLC

[Docket No. EG05–90–000]

Take notice that on August 4, 2005, Louisiana Generating LLC filed with the Commission an application for redetermination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: 5 p.m. eastern time on August 25, 2005.

4. San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange Corporation; Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange

[Docket No. EL00–95–135; EL00–98–122]

Take notice that on August 5, 2005, the California Independent System Operator Corporation (CAISO) tendered for filing a compliance filing made pursuant to the Commission July 5, 2005 Order issued in the above proceeding, 112 FERC ¶ 61,024 (2005). CAISO is proposing a new section 2.3.3.1.1. to the ISO Tariff and section 1.3.4. to the Outage Coordination Protocol.

CAISO states that this filing has been served upon the Public Utilities Commission, the California Energy Commission the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Agreements under the CAISO Tariff, as well as all parties of the record in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on September 6, 2005.

5. Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company

[Docket No. EL02–121–008]

Take notice that on August 4, 2005, PJM Interconnection, L.L.C. tendered for filing a refund report in compliance with the Commission's Order issued March 29, 2005, 110 FERC ¶ 61,378 (2005).

Comment Date: 5 p.m. eastern time on September 2, 2005.

6. Town of Norwood, Massachusetts v. National Grid USA, New England Electric System, Massachusetts Electric Company, and Narragansett Electric Light Company

[Docket No. EL03–37–002]

Take notice that on August 3, 2005, National Grid USA, on behalf of itself and its subsidiary New England Power Company (NEP), tendered for filing a compliance report informing the Commission of the manner in which it has recalculated the balance owed to NEP from the Town of Norwood, as ordered by the Commission in the order issued on July 22, 2005, 112 FERC ¶ 61,099 (2005).

Comment Date: 5 p.m. eastern time on September 2, 2005.

7. PJM Interconnection, L.L.C.

[Docket No. EL03–236–008]

Take notice that on August 4, 2005, PJM Interconnection, L.L.C. (PJM) submitted revisions to the PJM Open Access Transmission Tariff and the PJM Amended and Restated Operating Agreement in compliance with the Commission's Order issued July 5, 2005 in PJM Interconnection, L.L.C., 112 FERC ¶ 61,031 (2005).

PJM states that copies of this filing have been served on all PJM members, each entity designated on the official service list compiled by the Secretary in this proceeding and each State electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. eastern time on September 2, 2005.

Standard Paragraph

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 (19 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 long on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protests to the Federal Energy Regulatory Commission, 888 First Street, 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 to 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 TYY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4538 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 12, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–770–002.

Applicants: AIG Energy Inc.

Description: AIG Energy, Inc. submits its triennial updated market analysis and revised sheets to its market-based rate tariff.

Filed Date: 07/27/2005.

Accession Number: 20050728–0192.

Comment Date: 5 p.m. eastern time on Wednesday, August 17, 2005.

Docket Numbers: ER05–859–002.

Applicants: ATPower & Energy, LLC.

Description: ATPower & Energy, LLC submits a further amendment to its petition for acceptance of its Initial Rate Schedule FERC No. 1, the granting of certain waivers and the granting of certain blanket approvals filed on 4/25/05, as amended on 6/9/05.

Filed Date: 08/08/2005.

Accession Number: 20050809–0145.

Comment Date: 5 p.m. eastern time on Thursday, August 19, 2005.

Docket Numbers: ER05–1189–001.

Applicants: Carolina Power & Light Company.

Description: Progress Energy, Inc., on behalf of its subsidiary Carolina Power & Light Company (CP&L) d/b/a Progress Energy Carolinas, Inc., submits the original executed copy of the amendments to the 1981 Power Coordination Agreement contained in Attachment B of its 7/1/05 filing in Docket No. ER05–1189–000.

Filed Date: 07/06/2005.

Accession Number: 20050708–0047.

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: ER05–1286–000.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas & Electric Company submits revised interconnection agreement between Pacific gas and Electric Company and Modesto Irrigation District.

Filed Date: 08/03/2005.

Accession Number: 20050811–0266.

Comment Date: 5 p.m. eastern time on Wednesday, August 24, 2005.

Docket Numbers: ER05–1288–000.

Applicants: Wheelabrator North Andover Inc.

Description: Petition of Wheelabrator North Andover Inc. for order accepting market-based rate tariff for filing, granting waiver of certain Commission regulations; and granting certain blanket approvals.

Filed Date: 08/03/2005.

Accession Number: 20050805–0169.

Comment Date: 5 p.m. eastern time on Wednesday, August 24, 2005.

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 and 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4539 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12063–001 Idaho]

Little Wood River Ranch II William Arkoosh; Notice of Availability of Final Environmental Assessment

August 12, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application and prepared the enclosed Environmental Assessment (EA) for an original license for William Arkoosh's Little Wood River Ranch II Hydroelectric Project. The proposed project would be located on the Little Wood River, 6 miles west of the town of Shoshone, Lincoln County, Idaho. The proposed project would be located entirely on private lands owned by William Arkoosh. The EA contains the staff's analysis of the potential environmental impacts of the proposed project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

For further information, contact Gaylord Hoisington at (202) 502–6032.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4521 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–54–000]

Wyoming Interstate Company, Ltd.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Piceance Basin Expansion Project

August 12, 2005.

The environmental staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final Environmental Impact Statement (EIS) on the interstate natural gas pipeline transmission facilities proposed by Wyoming Interstate Company, Ltd. (WIC) in the above-referenced docket.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act. Its purpose is to inform the Commission, the public, and other permitting agencies about the potential adverse and beneficial environmental impacts associated with the proposed Piceance Basin Expansion Project (Piceance Project) and its alternatives, and to recommend practical, reasonable, and appropriate mitigation measures which would avoid or reduce any significant adverse impacts to the maximum extent practicable and, where feasible, to less than significant levels. The final EIS concludes that the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact.

The Piceance Project involves the construction and operation of a new interstate natural gas pipeline system that would extend between the existing Colorado Interstate Gas Company (CIG) Greasewood Compressor Station in Rio Blanco County, Colorado, and the existing CIG Wamsutter Compressor Station in Sweetwater County, Wyoming.[1] The final EIS assesses the potential environmental effects of the construction and operation of the following facilities in Colorado and Wyoming:

- About 141.8 miles of 24-inch-diameter new pipeline with 89.9 miles located in Colorado (Rio Blanco and

[1] Both WIC and CIG are affiliates owned by El Paso Corporation.

Moffat Counties) and 51.9 miles located in Wyoming (Sweetwater County);

- Additional compression to be installed at the existing CIG Greasewood Compressor Station in Colorado;
- Four meter stations at interconnections with other pipeline systems (two associated with the CIG Greasewood Compressor Station, two at the CIG Wamsutter Compressor Station);
- Three pigging facilities (one associated with each compressor station and a new facility at milepost 54.0 near County Road 4 in Moffat County, Colorado);
- Nine mainline valves (one valve at each of the two existing compressor stations and seven valves along the pipeline ROW); and
- Other associated facilities, such as access roads and communication towers.

The proposed project would be capable of transporting up to 350,000 dekatherms of natural gas per day (Dthd) from the CIG Greasewood Compressor Station to interconnections at Wamsutter, Wyoming with the CIG and WIC interstate transmission pipeline systems that serve markets east and west of Wamsutter.

The final EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the FERC's Public Reference Room identified above. In addition, copies of the final EIS have been mailed to Federal, State, and local agencies; public interest groups; individuals and affected landowners; libraries; newspapers; and parties to this proceeding.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of the final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits (CP05–54) in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4518 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF05–4–000]

Broadwater Energy; Notice of Intent To Prepare an Environmental Impact Statement for the Broadwater LNG Project; Request for Comments on Environmental Issues, and Notice of Joint Public Meetings

August 11, 2005.

The Federal Energy Regulatory Commission (FERC or Commission) and the U.S. Department of Homeland Security, U.S. Coast Guard (Coast Guard) are in the process of evaluating the Broadwater LNG [1] Project planned by Broadwater Energy (Broadwater), a joint venture between TCPL (TransCanada Pipelines Ltd.) USA LNG, Inc. and Shell U.S. Gas & Power LLC. The project would be located in Long Island Sound, within New York State Waters, and would consist of an offshore LNG import terminal and an offshore natural gas pipeline that would connect to an existing offshore natural gas transmission pipeline.

As a part of this evaluation, FERC staff will prepare an environmental impact statement (EIS) that will address the environmental impacts of the project and the Coast Guard will assess the safety and security of the project. As described below, the FERC and the Coast Guard will hold joint public meetings to allow the public to provide input to these assessments.

The Commission will use the EIS in its decisionmaking process to determine whether or not to authorize the project. This notice explains the scoping process we [2] will use to gather information on the project from the public and interested agencies and summarizes the process that the Coast Guard will use. Your input will help identify the issues that need to be evaluated in the EIS and in the Coast Guard's safety and security assessment.

The FERC will be the lead Federal agency in the preparation of an EIS that will satisfy the requirements of the National Environmental Policy Act (NEPA). Several Federal agencies will serve as cooperating agencies during preparation of the EIS: the Coast Guard; the U.S. Environmental Protection Agency; the U.S. Army Corps of Engineers; and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service. In addition, we have invited the U.S. Fish & Wildlife Service, the New York State Department of Environmental Conservation, and the New York State Department of State to serve as cooperating agencies in preparation of the EIS.

Comments on the project may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of sending written comments, we invite you to attend the public scoping meetings that we have scheduled as follows:

[1] Liquefied natural gas.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

SCHEDULE AND LOCATIONS FOR PUBLIC MEETINGS

Date and time	Location
Tuesday, September 13, 2005: 7 p.m. to 10 p.m. (e.s.t.).	Stony Brook University, Charles B. Wang Center, Stony Brook, NY 11794 (across from parking garage on campus), Phone: (631) 632–6320.
Wednesday, September 14, 2005: 7 p.m. to 10 p.m. (e.s.t.).	Shoreham-Wading River Middle School Auditorium, 100 Randall Road, Shoreham, NY 11786, Phone: (631) 821–8268.
Tuesday, September 20, 2005: 7 p.m. to 10 p.m. (e.s.t.).	East Lyme High School Auditorium, 30 Chesterfield Road, East Lyme, CT 06333, Phone: (860) 739–6946.
Wednesday, September 21, 2005: 7 p.m. to 10 p.m. (e.s.t.).	Branford High School Auditorium, 185 East Main Street, Branford, CT 06405, Phone: (203) 488–7291.

The EIS scoping meetings listed above will be combined with the Coast Guard's public meetings regarding the safety and security of the project. At the meetings, the Coast Guard will discuss its ongoing analysis of (1) the suitability of Long Island Sound to accommodate LNG carriers, and (2) the facility's operations manual, emergency response plan, and security plan. The Coast Guard has issued a separate meeting notice for the safety and security aspects of the project.

This Notice of Intent is being sent to Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; commentors and other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Planned Project

Broadwater plans to construct and operate an LNG terminal and natural gas transmission pipeline in Long Island Sound within New York State waters. The general location of the project is shown on Figure 1. The Broadwater LNG Project would include a floating storage and regasification unit (FSRU) that would receive LNG from LNG carrier vessels, store the LNG in onboard storage tanks, and vaporize the LNG to natural gas. The natural gas would be sent out to the existing interstate natural gas pipeline system via a new offshore pipeline (described below). The FSRU would be approximately 1,250 feet long and 200 feet wide, have a draft of approximately 40 feet, and would be shaped like a marine vessel. The deck of the FSRU would be approximately 80 feet above the water line, and some structures and equipment would extend above the deck.

The FSRU would be moored to a yoke mooring system that would consist of a fixed, tower-like structure secured to the seafloor by multiple legs attached to piles driven into the sediments. The FSRU would pivot around the mooring tower in response to wind, tide, and current conditions.

The FSRU would be moored at a water depth of approximately 90 feet at a distance of approximately 9 miles from the nearest Long Island shoreline and approximately 10 miles from the nearest Connecticut shoreline. After a review of safety and security issues related to the project, the Coast Guard would establish a safety zone around the FSRU, and all marine traffic not related to operation of the project would be prohibited from entering the safety zone.

Operation of the FSRU would involve the following basic activities:

- Receipt of LNG from two to three LNG carriers per week, each with a capacity of 125,000 to 250,000 cubic meters. Support tugs would assist the LNG carriers in berthing, with only one LNG carrier berthed at the FSRU at any one time.
- Temporary storage of up to 8 billion cubic feet (350,000 cubic meters) of LNG in onboard storage tanks.
- Vaporization of the stored LNG would be accomplished using a closed-loop, shell-and-tube vaporization system that would not require seawater intakes or discharges.

In addition to the LNG storage and vaporization equipment, the FSRU would also house the following major items:

- Power generation turbines fueled by natural gas.
- Equipment for gas and fire detection, fire protection, fire-fighting, life-saving, and other safety concerns.
- LNG unloading arms, cranes, piping, and manifolds.
- Crew quarters.

After vaporization of the LNG, natural gas would be sent out from the FSRU into a new 30-inch-diameter offshore pipeline that would extend approximately 22 miles from the FSRU to an offshore connection with an existing pipeline owned by the Iroquois Gas Transmission System (IGTS). The existing IGTS pipeline extends across Long Island Sound in an approximately northeast to southwest direction. Broadwater plans to bury the new pipeline beneath the seafloor. The project would deliver an average of about one billion cubic feet of natural gas per day to the IGTS pipeline, with a peak delivery rate of 1.25 billion cubic feet per day. IGTS would deliver the natural gas from the Broadwater LNG Project to its existing and future customers. Broadwater plans to have the project in operation by 2010.

Both the FSRU and the new pipeline would be located in offshore waters within Suffolk County, New York. Broadwater would be required to obtain a right-of-way lease from the New York State Office of General Services for the FSRU and the pipeline.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action when it considers whether or not an LNG import terminal or an interstate natural gas pipeline should be approved. The FERC will use the EIS to consider the environmental impacts that could result if it issues project authorizations to Broadwater under Sections 3 and 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. With this Notice of Intent, the Commission staff is requesting public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction, operation, maintenance, and abandonment of the proposed project under these general headings:

- Geology and soils
- Water resources
- Aquatic resources
- Vegetation and wildlife
- Threatened and endangered species

- Land use, recreation, and visual resources
- Cultural resources
- Socioeconomics
- Marine transportation
- Air quality and noise
- Reliability and safety
- Cumulative impacts

In the EIS, we will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on affected resources.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; commentors; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the Public Participation section of this Notice of Intent.

Although no formal application has been filed, the FERC staff has already initiated its NEPA review under its Pre-filing Process. The purpose of the Pre-filing Process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. In addition, the Coast Guard, which would be responsible for reviewing the safety and security aspects of the planned project and regulating safety and security if the project is approved, has initiated its review of the project as well.

With this notice, we are asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues, in addition to those agencies that have already agreed to serve as cooperating agencies (as noted above), to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this Notice.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on comment letters received during our NEPA Pre-filing Process, a preliminary review of the project area, and the planned facility information provided by Broadwater. This preliminary list of issues, which is presented below, may be revised based on your comments and our continuing analyses.

- Conversion of the project area from open water to an energy facility (''industrialization'' of Long Island Sound);
- Potential impacts to the marine environment from construction activities, including habitats, water quality, and aquatic life;
- Potential impacts on essential fish habitat and State and/or Federally-listed threatened and endangered species;
- Consistency with New York State and Long Island Sound Coastal Zone Management programs;
- Potential impacts due to air emissions from the FSRU and the LNG carriers;
- Potential visual impacts due to the presence of the FSRU and the LNG carriers;
- Potential impacts of ballast water intake by the FSRU and the LNG carriers;
- Potential impacts to public use resulting from creation of a safety zone around the FSRU;
- Potential impacts of increased boat traffic associated with construction in nearshore marine waters;
- Potential impacts of increased boat traffic associated with LNG carrier traffic and associated support vessels;
- Potential impacts on cultural resources at the site of the mooring tower and along the pipeline route;
- Potential noise impacts due to construction and operation;
- Risks associated with the transport and storage of LNG and the transport of natural gas;
- Alternative locations and alignments for the LNG terminal and offshore pipeline route, respectively; and
- Assessment of the cumulative effects of the project when combined with other past, present, or reasonably foreseeable future actions in the project area.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the planned project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of Gas Branch 3, DG2E.
- Reference Docket No. PF05–4–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before October 7, 2005.

The Commission strongly encourages electronic filing of any comments in response to this Notice of Intent. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can file comments you will need to create a free account, which can be accomplished on-line.

The public scoping meetings (dates, times, and locations are listed above) are designed to provide another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues that they believe should be addressed in the EIS. A transcript of each meeting will be generated so that your comments will be accurately recorded.

Once Broadwater formally files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Environmental Mailing List

If you wish to remain on the environmental mailing list, please return the attached Mailing List Form. If you do not return this form, we will remove your name from our mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary link.'' Click on the eLibrary link, select ''General Search'' and enter the project docket number excluding the last three digits (*i.e.*, PF05–4) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or by e-mail at *FercOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Broadwater has established an Internet Web site for this project at *http://www.broadwaterenergy.com*. The Web site includes a description of the project, additional maps of the project area, and answers to frequently asked questions. You can also request additional information or provide comments directly to Broadwater at (800) 798–6379.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4526 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–254–000]

Kern River Gas Transmission Company; Notice of Technical Conference

August 12, 2005.

The Commission, in its order issued July 26, 2005,[1] directed that a technical conference be held to investigate Kern River's allocation of compressor fuel between 2003 expansion shippers and vintage shippers in the General Terms and Conditions of its tariff and to address the concerns raised in the protest of the parties.

Take notice that a technical conference will be held on Wednesday, September 21, 2005, at 9 a.m., in a room to be designated at the office of the Federal Energy Regulatory Commission, 888 First Street NE., Washington DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All interested persons and staff are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4516 Filed 8–18–05; 8:45 am]

BILLING CODE 6717–01–P

[1] Kern River Gas Transmission Company, 112 FERC ¶ 61,132 (2005).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7955–4]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 2161.01; Region 7 Lead Education and Awareness Project in St. Louis, MO.; was approved 07/31/2005; OMB Number 2020–0029; expires 08/31/2007.

EPA ICR No. 2179.02; Recordkeeping and Periodic Reporting of the Production, Import, Recycling, Transshipment and Feedstock Use of Ozone Depleting Substances (Critical Use Exemption) (Renewal); was approved 08/04/2005; OMB Number 2060–0564; expires 08/31/2008.

EPA ICR No. 1750.04; National Volatile Organic Compound Emission Standards for Architectural Coatings; in 40 CFR part 59, subpart D; was approved 07/31/2005; OMB Number 2060–0393; expires 07/31/2008.

EPA ICR No. 2167.01; Detroit Children's Health Study Health Effects of Environmental Exposure among Children Living in the Detroit, MI area (Renewal); was approved 07/28/2005; OMB Number 2080–0074; expires 07/31/2008.

EPA ICR No. 2066.03; NESHAP for Engine Test Cells/Stands; in 40 CFR part 63, subpart PPPPP; was approved 07/14/2005; OMB Number 2060–0483; expires 07/31/2008.

EPA ICR No. 1974.04; NESHAP for Cellulose Products Manufacturing; in 40 CFR part 63, subpart UUUU (Renewal); was approved 07/14/2005; OMB Number 2060–0488; expires 07/31/2008.

EPA ICR No. 1679.05; NESHAP for Marine Tank Vessel Loading Operations (Renewal); in 40 CFR part 63, subpart Y; was approved 07/12/2005; OMB Number 2060–0289; expires 07/31/2008.

EPA ICR No. 1947.03; NESHAP for Solvent Extraction for Vegetable Oil Production (Renewal); in 40 CFR part 63, subpart GGGG; was approved 07/12/2005; OMB Number 2060–0471; expires 07/31/2008.

EPA ICR No. 2025.03; NESHAP for Friction Materials Manufacturing; in 40 CFR part 63, subpart QQQQQ (Renewal); was approved 07/12/2005; OMB Number 2060–0481; expires 07/31/2008.

EPA ICR No. 2155.01; Willingness to Pay Survey: Phase III Cooling Water

Intake Structures; was approved 08/05/2005; OMB Number 2040–0262; expires 06/30/2006.

EPA ICR No. 2142.01; National Survey of Successful Waste Disposal Programs in Rural Areas in the United States; was approved 08/10/2005; OMB Number 2060–0568; expires 12/31/2005.

Short Term Extensions

EPA ICR No. 0328.10; Spill Prevention, Control and Countermeasures (SPCC) Plans; in 40 CFR 112.1–112.7; OMB Number 2050–0021; on 08/03/2005; OMB extended the expiration date through 02/28/2006.

Dated: August 11, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–16477 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2005–0047; FRL–7955–3]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Steel Pickling (Renewal); OMB Number 2060–0419; EPA ICR Number 1821.05

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 19, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2005–0047, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 FR 24020) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2005–0047, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP for Steel Pickling (Renewal).

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Steel Pickling, published at 40 CFR part 63, subpart CCC, were proposed on September 18, 1997 (62 FR 49051) and promulgated on June 22, 1999 (64 FR 33202). This rule applies to all facilities that pickle steel using hydrochloric acid or regenerate hydrochloric acid, and are major sources or are part of a facility that is a major source. This regulation does not apply to any pickling line that uses an acid other than hydrochloric acid or an acid solution containing less than 6 percent HCl or at a temperature less than 100 °F. This rulemaking establishes limits for hydrochloric acid emissions from continuous and batch pickling lines and acid regeneration units and limits for chlorine emissions from acid regeneration units. Also, operational and equipment standards are established for stationary acid storage vessels.

The monitoring, recordkeeping, and reporting requirements outlined in the rule are similar to those required for other NESHAP regulations. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), respondents would submit one-time notifications of applicability and a one-time report on performance test results for the primary emission control device. Plants also must develop and implement a Startup, Shutdown, and Malfunction Plan (SSMP) and submit semiannual reports of any event where the procedures in the plan were not followed. Sources are required to submit semiannual reports at all times including for periods of monitoring exceedances and periods of compliance certifying that no exceedances have occurred. NESHAP subpart CCC also requires the owner or operator to submit a written maintenance plan for each emission control device. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject

to NESHAP. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 166 hours (rounded) per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Major sources that pickle steel using hydrochloric acid or regenerate hydrochloric acid using continuous and batch pickling lines, acid regeneration units, and stationary acid storage vessels.

Estimated Number of Respondents: 72.

Frequency of Response: Initial, semiannual and on-ocassion.

Estimated Total Annual Hour Burden: 25,448 hours.

Estimated Total Annual Costs: $2,063,697, which includes $830 annualized capital/startup costs, $8,494 annual O&M costs, and $2,054,373 annual labor costs.

Changes in the Estimates: There is an increase of 344 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR burdens. This increase is due to an increase in the number of new or modified sources. In addition, there was a small increase on the annualized cost associated with operation and maintenance costs for continuous emission flow rate monitors by existing sources.

Dated: August 8, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–16478 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2005–0044; FRL–7955–2]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Primary and Secondary Emissions From Basic Oxygen Furnaces (Renewal); OMB Number 2060–0029; EPA ICR Number 1069.08

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 19, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2005–0044, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 FR 24020) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2005–0044, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the

electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Primary and Secondary Emissions from Basic Oxygen Furnaces (Renewal).

Abstract: The New Source Performance Standards (NSPS) for the regulations published at 40 CFR part 60, subparts N and Na were proposed on were proposed on June 11, 1973, and promulgated on March 8, 1974. These regulations apply to each basic oxygen process furnace (BOPF) in an iron and steel plant commencing construction, modification or reconstruction after the date of a proposal. An opacity limit was promulgated on April 13, 1978, as a supplement to the mass standard. On January 20, 1983, amendments to the Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces, merged with Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities (Subpart Na). Subpart Na is applicable to any top-blown BOPF, hot metal transfer station or skimming station for which construction, reconstruction, or modification commenced after January 20, 1983.

The monitoring, recordkeeping, and reporting requirements outlined in the rule are similar to those required for other NSPS regulations. Consistent with the NSPS General Provisions (40 CFR part 60, subpart A), respondents would submit initial notifications, conduct performance test and report test results for the primary emission control devices, and submit periodic reports. Sources also must develop and implement a Startup, Shutdown, and Malfunction Plan (SSMP) and submit semiannual reports of any event where the procedures in the plan were not followed. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NSPS. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 158 hours (rounded) per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Basic oxygen process furnace shops at iron and steel plants with furnaces, skimming stations and/or hot metal transfer stations.

Estimated Annual Number of Respondents: 5.

Frequency of Response: Initial, semiannual and on occasion.

Estimated Total Annual Hour Burden: 1,896 hours.

Estimated Total Annual Costs: $179,440, which includes $18,000 annualized capital/startup costs, $8,397 annual O&M costs, and $153,043 annual labor costs.

Changes in the Estimates: There is an increase of 884 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the number of modified/reconstructed sources. There is also a small increase on the annualized cost on the renewal of this ICR (from $25,794 to 26,397 or $603) associated with an increase in the operation and maintenance costs resulting from the increase in the number of sources. However, this increase is not reflected in the OMB 83–I form due to rounding of the values.

Dated: August 9, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–16482 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6666–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 8/08/2005 through 8/12/2005

Pursuant to 40 CFR 1506.9.

EIS No. 20050333, Final EIS, FRC, 00, Piceance Basin Expansion Project, Construction and Operation of a New Interstate Natural Gas Pipeline System, Wamsutter Compressor Station to Interconnections Greasewood Compressor Station, Rio Blanco County, CO and Sweetwater County, WY, Wait Period Ends: 09/19/2005, Contact: Thomas Russo 1–866–208–3372.

EIS No. 20050334, Final EIS, DOE, MT, South Fork Flathead Watershed Westslope Cuttroat Trout Conservation Program, Preserve the Genetic Purity of the Westslope Cuttroat Trout Population, Flathead National Forest, Flathead River, Flathead, Powell and Missoula Counties, MT, Wait Period Ends: 09/19/2005, Contact: Colleen Spiering 503–230–5756.

EIS No. 20050335, Final Supplement, AFS, MT, Gallatin National Forest, Updated Information, Replaces the Effects Analysis for the Northern Goshawk in the Main Boulder Fuels Reduction Project (FEIS), Implementation, Gallatin National Forest, Big Timber Ranger District, Sweet Grass and Park Counties, MT , Wait Period Ends: 09/19/2005, Contact: Barbara Ping 406–522–2558.

EIS No. 20050336, Final EIS, FAA, VA, Washington Dulles International Airport Project, Acquisition of Land, Construction and Operation, IAD 2004 Airport Layout Plan (ALP), Dulles, VA, Wait Period Ends: 09/19/2005, Contact: Joseph Delia 703–661–1358.

EIS No. 20050337, Final EIS, AFS, CA, Empire Vegetation Management Project, Reducing Fire Hazards, Harvesting of Trees Using Group-Selection (GS) and Individual Trees Selection (ITS) Methods, Mt. Hough Ranger District, Plumas National Forest, Plumas County, CA, Wait Period Ends: 09/19/2005, Contact: Gary Rotta 530–283–0555.

EIS No. 20050338, Final EIS, FHW, OH, OH–823, Portsmouth Bypass Project, Transportation Improvements, Funding and U.S. Army COE Section 404 Permit, Appalachian Development Highway, Scioto County, OH, Wait Period Ends: 09/19/2005, Contact: Dennis A. Decker 614–280–6896.

EIS No. 20050339, Draft EIS, DOA, SD, Deerfield Project Area, Proposes to

Implement Multiple Resource Management Actions, Mystic Ranger District, Black Hills National Forest, Pennington County, South Dakota, Comment Period Ends: 10/03/2005, Contact: Robert Thompson 605–343–1567.

EIS No. 20050340, Draft EIS, AFS, UT, West Fork Blacks Fork Allotment Management Plan, Proposes to Authorize Continued Livestock Grazing, Township 1 North, Range 11 East, Salt Lake Principle Merida, Evanston Ranger District, Wasatch-Cache National Forest, Summit County, UT, Comment Period Ends: 10/03/2005, Contact: Richard Zobell 307–782–6555.

EIS No. 20050341, Final EIS, COE, 00, Arkansas River Navigation Study, To Maintain and Improve the Navigation Channel in Order to Enhance Commercial Navigation on the McCellan Kerr Arkansas River Navigation System (MKARNS), Several Counties, AR and Several Counties, OK, Wait Period Ends: 09/19/2005, Contact: Renee Wright 501–324–6139.

EIS No. 20050342, Draft EIS, NOA, 00, Consolidated Atlantic Highly Migratory Species Fishery Management Plan for Atlantic Tunas, Swordfish, and Shark and the Atlantic Billfish Fishery Management Plan, Implementation, Atlantic Coast, Caribbean and Gulf of Mexico, Comment Period Ends: 10/03/2005, Contact: Karyl Brewster Geisz 301–713–2347.

Amended Notices

EIS No. 20050044, Draft EIS, BLM, WY, Jonah Infill Drilling Project, Propose to Expand Development of Natural Gas Drilling, Sublette County, WY, Comment Period Ends: 10/07/2005, Contact: Carol Kruse 307–367–5352. Revision of Notice Published in **Federal Register** 02/11/2005: This Comment Period is Only for the Supplement Air Quality Information Portion; the Comment Period will end on 10/07/2005.

EIS No. 20050216, Draft EIS, IBR, CA, San Luis Drainage Feature Re-evaluation Project, Provide Agricultural Drainage Service to the San Luis Unit, Several Counties, CA, Comment Period Ends: 9/01/2005, Contact: Gerald Robbins 916–978–5061. Revision of Notice Published in **Federal Register** 6/03/2005: Extending the Comment Period from 8/03/2005 to 9/01/2005.

EIS No. 20050231, Draft EIS, AFS, MT, Gallatin National Forest, Proposed Travel Management Plan, Implementation, Forest Land and Resource Management, Madison, Gallatin, Park, Meagher, Sweetgrass and Carbon Counties, MT, Comment Period Ends: 9/02/2005, Contact: Steve Christiansen 406–587–6750 Revision of Notice Published in **Federal Register** 6/17/2005: Extending Comment Period from 8/01/2005 to 9/02/2005.

EIS No. 20050325, Draft EIS, AFS, WV, Programmatic—Monongahela National Forest Plan Revision, Proposes to Revise Land and Resource Management Plan, Barbour, Grant, Greebrier, Nicholas, Pendleton, Pocahontab, Preston, Randolph, Tucker, Webster Counties, WV, Comment Period Ends: 11/14/2005, Contact: Clyde Thompson 304–636–1800.

Revision of Notice Published in **Federal Register:** 8/12/2005: Correction to Comment Period from 9/26/2005 to 11/14/2005.

Dated: August 16, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–16473 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6666–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050229, ERP No. D–AFS–L65487–0R, Blue Mountain Land Exchange—Oregon Project, Proposed Exchange of Federal and Non-Federal Lands, Malheur, Umatilla, and Wallowa-Whitman National Forests, Baker, Grant, Morrow, Umatilla, Union and Wallowa Counties, OR.

Summary: EPA expressed environmental concerns about impacts to water quality and forest habitat as well as on the loss of dedicated old growth and net loss of Late and Old Structure habitat. EPA supports the identified prioritization of road restoration efforts proposed for acquired lands, but is concerned about uncertain funding to implement restoration efforts.

Rating EC2.

Final EISs

EIS No. 20050267, ERP No. F–NRC–G09804–NM, National Enrichment Facility (NEF), Construction, Operation, and Decommission of a Gas Centrifuge Uranium Enrichment Facility, License Application, NUREG–1790, near Eunice, Lea County, NM.

Summary: No formal comment letter was to the preparing agency.

EIS No. 20050275, ERP No. F–FHW–F40389–WI, WI–26 State Trunk Highway (STH) Improvements, Janesville at IH–90 to STH–60-East north of Watertown Road, Funding, (Project ID 1390–04–00), Rock, Jefferson, and Dodge Counties, WI

Summary: Many of EPA's earlier objections to the project have been satisfactory addressed; however, EPA continues to have concerns about the proposed project because of the need for additional refinement on compensatory mitigation for wetlands impacts.

EIS No. 20050279, ERP No. F–NPS–E65070–AL, Selma to Montgomery National Historic Trail Comprehensive Management Plan, Implementation, Dallas, Lowndes, and Montgomery Counties, AL.

Summary: EPA has no objections to the preferred alternative.

EIS No. 20050302, ERP No. FC–IBW–K24017–00, South Bay International Wastewater Treatment Plan (SBIWTP), To Address Treatment Alternatives from Tijuana, Mexico that cross into United States/Mexico Border in San Diego County, CA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: August 16, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–16474 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7956–6]

Science Advisory Board Staff Office; Notification of an Upcoming Science Advisory Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of an SAB Quality Review Committee (QRC) to review and discuss the SAB Draft Advisory Report on EPA's Regional Vulnerability Assessment (ReVA) Program.

DATES: September 8, 2005. A public telephone conference of the SAB Quality Review Committee (QRC) will be held on September 8, 2005, from 1 p.m. until 3 p.m. (eastern time).

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code for this teleconference may contact Mr. Thomas O. Miller, Designated Federal Officer, via telephone at (202) 343–9982 or via e-mail at *miller.tom@epa.gov.* An agenda and the documents that are the subject of this teleconference will be posted on the SAB Web site at: *http://www.epa.gov/sab.* The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The EPA Office of Research and Development requested a consultation with the SAB to review the methods and predictive tools used in ReVA, and the effectiveness of the ReVA integration toolkit (the ReVA Web-based Environmental Decision Toolkit or EDT) for communicating risk and uncertainty to clients and users. EPA's ReVA Program develops approaches to conducting comprehensive, regional-scale environmental assessments that can inform decision-makers about the magnitude, extent, distribution, and uncertainty of current and anticipated environmental vulnerabilities. In the context of ReVA, environmental vulnerabilities are risks of serious degradation of ecological goods and services that are valued by society. ReVA approaches make use of existing spatial data to depict: (1) The current patterns of condition and distribution of resources and human demographics, (2) variability in sensitivity of resources and human populations to various stresses, and (3) estimated spatial distribution of stressors. Future vulnerability estimates derived by ReVA include syntheses of: (1) Modeled estimates of ecological drivers of change (*i.e.* changes in pollution and pollutants, resource extraction, spread of non-indigenous species, land use change, and climate change) and resulting changes in stressor patterns; and (2) changes in resource sensitivity and projected changes in human demographics. The predictive tools in ReVA provide decision-makers with information about current and future cumulative stresses and spatially-explicit identification of anticipated environmental problems. These predictive tools can also be used to illustrate the trade-offs associated with alternative environmental and economic policies in the context of dynamic stakeholder values. ReVA relies heavily on the use of geographic information system technologies and quantitative integration and assessment methods to develop useful measures of a suite of decision-criteria for decision-makers at multiple scales. The SAB Panel held several meetings to discuss and draft its advisory as announced in **Federal Register** notices published on October 13, 2004 (69 FR 60864), and March 24, 2005 (70 FR 15084). These notices can be found on the SAB Web site at: *http://www.epa.gov/sab/panels/reva_rev_panel.htm.*

The SAB is now conducting a quality review of the Panel's draft advisory report. The purpose of the QRC is to determine whether: (i) The original charge questions to the SAB review panel have been adequately addressed, (ii) the report is clear and logical, and (iii) any conclusions drawn, or recommendations provided, are supported by the body of information in the advisory report. The outcome of the QRC review will be referred to the SAB for action during the Board's final public review of the draft report.

Procedures for Providing Public Comment: The SAB Staff Office accepts written public comments of any length, and will accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements at the SAB Quality Review Committee review of the Draft Advisory Report on EPA's Regional Vulnerability Assessment (ReVA) Program will not repeat previously submitted oral or written statements. *Oral Comments:* Requests to provide oral comments must be in writing (e-mail or fax) and received by Mr. Miller no later than September 1, 2005, to reserve time on the September 8, 2005, agenda. For teleconferences, opportunities for oral comment will be limited to no more than five minutes per speaker. *Written Comments:* Written comments should be received in the SAB Staff Office by the date specified above so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 12, 2005.

Anthony Maciorowski,

Acting Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–16491 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2005–0009; FRL–7952–6]

Office of Environmental Information; Announcement of Availability and Comment Period for Revised Chemical Identification and Latitude/Longitude Data Standards

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comment.

SUMMARY: Notice of availability for a 40 day review and comment period is hereby given for two revised data standards—(1) Chemical Identification Data Standard, and (2) Latitude/Longitude Data Standard.

The Chemical Identification Data Standard provides for the use of common identifiers for chemical substances regulated or monitored by environmental programs. The major revision to this standard is the inclusion of optional data element 2.15 ''Chemical Preferred Acronym Name.'' Use of the data element is not mandatory.

The Latitude/Longitude Data Standard is a set of data elements that can be used for recording horizontal and vertical coordinates and associated metadata that define a point on the earth. The major revision to this standard is a reformatting which includes all permitted value lists in appendices and the addition of more specific permitted values to data element 1.7 ''Reference Point Code'' and 1.8 ''Reference Point Name.'' The use of the more specific permitted values is not mandatory.

FOR FURTHER INFORMATION CONTACT: Linda Spencer; Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., MC 2822T, Washington, DC 20460; phone: 202–566–1651; Fax:

202–566–1624; e-mail: *Spencer.linda@epa.gov.*

DATES: Comments must be submitted on or before September 23, 2005.

SUPPLEMENTARY INFORMATION: The standards are comprised of data elements, formats, and definitions. Each standard document provides an overview diagram that depicts the organization of the standard. These standards were developed and revised by the Environmental Data Standards Council (EDSC). The EDSC is a partnership of among EPA, States, and Tribes which promotes the efficient sharing of environmental information through the cooperative development of data standards.

The standards are intended for use in environmental data exchanges among States, Tribal entities and the U.S. EPA. They are not meant to dictate or to limit data an agency chooses to collect for its own internal purposes. Changes in data standards should not be interpreted to mean that revisions to databases or information systems are required. What they do mean is that formats for sharing data with Exchange Network (EN) partners will change because the Exchange Network has adopted Shared Schema Components based on the data standards. The SSCs are available on the Exchange Network Web site at *http://www.exchangenetwork.net.*

The draft data standards documents can be found on EDSC's Web site at *http://www.envdatastandards.net/* and are available through the Docket system as indicated below.

I. General Information

A. How Can I Get Copies of These Documents and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OEI–2005–0009. The official public docket is the collection of materials that is available for public viewing at the OEI Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Dated: August 9, 2005.

Oscar Morales,

Director, Collection Strategies Division, Office of Information Collection, U.S. Environmental Protection Agency.

[FR Doc. 05–16114 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7954–9]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice, request for public comments.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Action (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Order on Consent (''AOC,'' Region 9 Docket No. 2005–0013) pursuant to section 122(h) of CERCLA concerning the Perris Drum Superfund Removal Site (the ''Site''), located in Perris, California. The respondent to the AOC is The Glidden Company (''Glidden''). Through the proposed AOC, Glidden will reimburse the United States $95,000 in response costs incurred at the Site. The AOC provides Glidden with a covenant not to sue and contribution protection for the removal action at the Site. EPA maintains that a predecessor of Glidden arranged for the disposal of a portion of the hazardous substances subject to the response action at the Site. EPA incurred approximately $204,000 in total response costs, and EPA will maintain a lien against the real property that was subject to the response action as a means to obtain the balance of its response costs.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed AOC. The Agency's response to any comments received will be available for public inspection at EPA's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before September 19, 2005.

ADDRESSES: The proposed AOC may be obtained from Judith Winchell, in EPA Region IX Superfund Division, telephone (415) 972–3124. Comments regarding the proposed AOC should be addressed to Ms. Winchell at the U.S. Environmental Protection Agency (SFD–7), 75 Hawthorne Street, San Francisco, California 94105, and should reference the Perris Drum Superfund Removal Site, and Region IX Docket No. 2005–0013.

FOR FURTHER INFORMATION CONTACT: J. Andrew Helmlinger, Office of Regional Counsel, (415) 972–3904, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: August 11, 2005.

James C. Hanson,

Acting Director, Superfund Division.

[FR Doc. 05–16480 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7955–1]

Proposed CERCLA Administrative Cost Recovery Settlement; Axsys Technologies, Inc., U.S. Cap and Jacket Superfund Site, Prospect, CT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the U.S. Cap and Jacket Superfund Site in Prospect, Connecticut with the following settling party: Axsys Technologies, Inc. The settlement

requires the settling party to pay $175,000.00 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214—2023.

DATES: Comment must be submitted on or before September 19, 2005.

ADDRESSES: Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100 (RAA), Boston, Massachusetts 02114–2023 and should refer to: In re: U.S. Cap and Jacket Superfund Site, U.S. EPA Docket No. 01–2005–0036.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Gregory Dain, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region I, Office of Environmental Stewardship, One Congress Street, Suite 1100 (SEL), Boston, MA 02114–2023.

Dated: July 14, 2005.

Susan Studlien,

Director, Office of Site Remediation & Restoration.

[FR Doc. 05–16481 Filed 8–18–05; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK

[Public Notice 76]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank) and the U.S. Small Business Administration (SBA) provide working capital guarantees to lenders. In assessing the creditoworthiness of an applicant, Ex-Im Bank and SBA review EIB form 84–1. This form provides information which allows the us to obtain legislatively required reasonable assurance of repayment, as well as to fulfill other statutory requirements. Ex-Im Bank will be the primary administrator of the form.

DATES: Written comments should be received on or before September 19, 2005 to be assured of consideration.

ADDRESSES: Direct all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503, (202) 395–3897.

Titles and Form Numbers: U.S. Small Business Administration, Export-Import Bank of the United States Joint Application for Working Capital Guarantee.

OMB Number: 3048–0003.

Form Number: EIB–SBA 84–1 (Revised 2/2005).

Type of Review: Revision of a currently approved collection.

Annual Number of Respondents: Ex-Im Bank: 450; SBA: 180; Total 630.

Estimated Time Per Respondent: 2 Hours.

Annual Burden Hours: Ex-Im Bank: 900; SBA: 360; Total: 1,260.

Frequency of Reporting or Use: Upon application for guarantees or working capital loans advanced by the lenders to U.S. exporters.

Dated: August 15, 2005.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

OMB No.: 3048-0003
Expires

(SBA Use Only) Date Received C.I.D. No. Intermediary	U.S. SMALL BUSINESS ADMINISTRATION EXPORT-IMPORT BANK OF THE UNITED STATES JOINT APPLICATION FOR EXPORT WORKING CAPITAL GUARANTEE	(Ex-Im Bank Use Only) Date Received

PART A. PRINCIPAL PARTIES

1. Borrower/Exporter Please circle the appropriate answer: New to Ex-Im Bank or SBA? Yes No

Company Name	D&B No.		Telephone No.
Name and Title of Contact Person	Federal ID No.		Fax No.
Address	City	State	Zip
Gross Sales: $	No. of Full-Time Employees:	Primary North American Industrial Classification System (NAIC) No.:	"Small Business Concern" as described in SBA Guidelines? □ Yes □ No

Has the Borrower or its owner(s), or the Guarantor ever filed for protection under U.S. bankruptcy laws? Has either had an involuntary bankruptcy petition filed against it? □ Yes □ No
Is the Borrower a minority-owned business □ Yes □ No A women-owned business? □ Yes □ No

2. Borrower's Management (Proprietors, partners, officers, directors and holders of all outstanding stock or other ownership interests - 100% of ownership must be shown. Include anyone who was a principal within the last six months.) Attach separate sheet of paper if necessary.

Name	Complete Street Address	% owned	Social Security Number	Title/Management position	Gender* (M/F)
Race* (check one or more boxes): □ American Indian/Alaska Native; □ Black/African American; □ Asian; □ Native Hawaiian/Pacific Islander; □ White. Ethnicity:* □ Hispanic/Latino; □ Not Hispanic/Latino. Military Service Status* (choose one): □ Non-Veteran; □ Veteran; □ Service Disabled Veteran					
Race* (check one or more boxes): □ American Indian/Alaska Native; □ Black/African American; □ Asian; □ Native Hawaiian/Pacific Islander; □ White. Ethnicity:* □ Hispanic/Latino; □ Not Hispanic/Latino. Military Service Status* (choose one): □ Non-Veteran; □ Veteran; □ Service Disabled Veteran					
Race* (check one or more boxes): □ American Indian/Alaska Native; □ Black/African American; □ Asian; □ Native Hawaiian/Pacific Islander; □ White. Ethnicity:* □ Hispanic/Latino; □ Not Hispanic/Latino. Military Service Status* (choose one): □ Non-Veteran; □ Veteran; □ Service Disabled Veteran					

*This information is collected for statistical purposes only. It has no bearing on the credit decision. Disclosure is voluntary.

3. Borrower's Affiliate(s) If more than one affiliate, please attach separate sheet of paper.

Company Name	D&B No.	Telephone No.	
Name and Title of Contact Person	Federal ID No.	Fax No.	
Street Address	City	State	Zip

4. Personal Guarantor(s) If more than one guarantor, please attach separate sheet of paper.

Name	Social Security No. Date of Birth and Place of Birth	Telephone No. Fax No.	
Street Address	City	State	Zip

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5. Lender Please circle the appropriate answer: New to Ex-Im Bank or SBA? Yes (If yes, submit annual report.) No			
Name	Federal ID No.	Telephone No. Fax No.	
Address	City	State	Zip

PART B. INFORMATION ABOUT THIS TRANSACTION

1. Loan Information		
Loan Amount: $	Term of Loan: □ 6 months □ Other (specify:) □ 1 year	Type of Loan (check one): □ Revolving □ Transaction(s) Specific
Interest Rate to be Charged: Lender Interest Rate _____% Per Annum	Other Fees or Charges (type and amount);	Renewal? □ Yes □ No
If Interest Rate is to be Variable: Base Rate:_____ Adjustment Period:_____ (Monthly, Quarterly, Annually, etc.) Spread:_____ Base Rate Source:_____ (WSJ, LIBOR, etc.)	Conversion of Preliminary Commitment? □ Yes If yes: commitment #_____ □ No	Were You Assisted by an Ex-Im Bank City/State Partner or a Small Business Development Center? □ Yes If yes, please identify: Name & Address:_____ _____ Contact Name:_____ Telephone No.:_____ □ No

2. Transaction Information			
Products/Goods/Services to be exported (description):			
Estimated Total Export Sales to be supported by this Loan: $ _____			
Principal Countries of Export (please identify the top 3 countries):			
(Ex-Im Bank applicants only) U.S. Content Percentage: _____ %			
Please estimate the number of jobs to be supported by this Loan:	# of existing jobs maintained: # of additional jobs created:		
Are Performance Guarantees or Standby Letters of Credit to be issued under this Loan?	Yes	No	Percentage of Loan to be utilized for performance guarantees: _____%

3. *(Ex-Im Bank applicants only)* **Please answer the following questions about the "export items" to be exported from the U.S.**			
a. Military Is the buyer of the export items associated in any way with the military? Are the items to be used by the military, or are they defense articles, or do they have a military application?	Yes	No	If yes, please attach a description of the buyer or items, as applicable.
b. Nuclear Are the export items to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities?	Yes	No	If yes, please attach a description of the items.
c. Environmental Are the export items to be used for an environmental project or do they have perceptible environmental benefits?	Yes	No	If yes, please attach a description of the items, including the following information: If transaction related to a specific project, identify the project; project location; and project sector or industry. If not related to a specific project, identify the sector in which items are to be used to create an environmental benefit.
d. Munitions Are the export items on the U.S. Munitions Control List (Part 121 of Title 22 of the Code of Federal Regulations), or do they require a validated export license from the Bureau of Export Administration?	Yes	No	If yes, please attach a description of the items. If uncertain whether a validated export license is required, written verification from the appropriate licensing agency may be required before loan approval.

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PART C. CERTIFICATIONS

***Please attach a signed, duplicate original of Part C for each Borrower and each Lender**

1. Borrower and Lender Certifications

The undersigned, each as authorized representative of the Borrower and the Lender (respectively) and on its behalf, each independently make the following certifications:

Debarment/Suspension – I certify and acknowledge that neither I or my Principals have within the past 3 years been a) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction; b) formally proposed for debarment, with a final determination still pending; c) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations; d) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or the undersigned has received a written statement of exception from Ex-Im Bank or SBA attached to this certification, permitting participation in this Transaction despite an inability to make certifications a) through d) in this paragraph. I further certify that I have not and will not knowingly enter into any agreements in connection with the goods and/or services purchased with the proceeds of this loan with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the Government-wide Non-procurement Suspension and Debarment Regulations - Common Rule (13 CFR part 145 – SBA Regulations and 12 CFR part 413 – Ex-Im Bank Regulations).

Compliance with Laws - In addition, I certify that I have not, and will not, engage in any activity in connection with this transaction that is a violation of a) the Foreign Corrupt Practices Act of 1977, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business); b) the Arms Export Control Act, 22 U.S.C. 2751 et seq.; c) the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq.; or d) the Export Administration Act of 1979, 50 U.S.C. 2401 et seq. I further certify that I have not been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months and, to the best of my knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

Lobbying (applicable to Lender only) – I certify to the best of my knowledge and belief, that if any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this commitment providing for the United States to guarantee a loan, I will complete and submit a Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions. Submission of this statement is imposed by 31 U.S.C. 1352 as a prerequisite for making or entering into this transaction. Any person who fails to file this statement when required is subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

False Statements – I certify that the representations made and the facts stated in this application and its attachments are true to the best of my knowledge and belief, and I have not misrepresented or omitted any material facts. I understand that knowingly making false statements or overvaluing a security to obtain a Government-guaranteed loan can subject me to a fine of up to $10,000 and imprisonment for up to five years under 18 U.S.C. 1001.

Borrower:

Name of Borrower	
Signature	Date
Name and Title of Authorized Representative (Print or Type)	

Lender:

Name of Lender	
Signature	Date
Name and Title of Authorized Representative (Print or Type)	

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2. Guarantor and Additional Borrower Representations and Certifications ***(SBA applicants only)***

The undersigned, each as authorized representative of the Borrower and the Guarantor(s) (respectively) and on its behalf, each independently make the following representations and certifications:

(If any answer to any of these questions is "yes," provide complete information on a separate sheet of paper)	**Borrower**	**Guarantor**
a. Are there any pending or threatened liens, tax liens, judgments or material litigation against the:	□ Yes □ No	□ Yes □ No
b. Does the Borrower or Guarantor or any spouse or member of the household of the Borrower or Guarantor, or anyone who owns, manages or directs the Borrower's business or their spouses or members of their households, work for SBA, Small Business Advisory Council, SCORE, any Federal Agency, or the Lender?	□ Yes □ No	□ Yes □ No
c. Has the Borrower or its owner(s), or the Guarantor ever filed for protection under U.S. bankruptcy laws? Has either had an involuntary bankruptcy petition filed against it?	□ Yes □ No	□ Yes □ No
d. Has the Borrower or its owner(s) or affiliates, or the Guarantor ever previously requested U.S. Government financing?	□ Yes □ No	□ Yes □ No
e. Is the Borrower or Guarantor now, or ever have been in the past: (a) under indictment, on parole or probation; or (b) charged with or arrested for any criminal offense other than a minor motor vehicle violation (including offenses which have been dismissed, discharged, or nolle prosequi); or (c) convicted, placed on pretrial diversion, or placed on any form of probation including adjudication withheld pending probation for any criminal offense other than a minor vehicle violation?	□ Yes □ No	□ Yes □ No
f. Are all owners and Guarantors U.S. Citizens? If no: Are the non-U.S. Citizens lawful permanent resident aliens? □ Yes (provide alien registration number(s): _____) □ No	□ Yes □ No	□ Yes □ No

Authorization - I authorize SBA and/or the Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I authorize the SBA's Office of Inspector General to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

Agreements - I agree that if SBA approves this application I will not, for at least two years after the date of SBA's approval, hire as an employee or consultant anyone that was employed by the SBA during the one-year period prior to the disbursement of the loan. I further agree that as consideration for any management, technical, and business development assistance that may be provided to me by SBA or on its behalf, I waive all claims against SBA and its consultants. I understand and agree that I need not pay anybody to deal with SBA, and that I have read and understand SBA Form 159, which explains SBA policy on Borrower and Lender representatives and their fees. By my signature, I certify that I have received a copy and read a copy of the "Statements Required by Law and Executive Order" (SBA Form 1261) that was attached to this application, and that I agree to comply with all such laws and executive orders.

False Statements - I certify that the representations made and the facts stated in this application and its attachments are true, to the best of my knowledge and belief, and I have not misrepresented or omitted any material facts. I understand that knowingly making false statements or overvaluing a security to obtain a Government-guaranteed loan can subject me to a fine of up to $10,000 and imprisonment for up to five years under 18 U.S.C. 1001, and to the civil remedies available under the False Claims Act, 31 U.S.C. 3729 et seq. I further understand that knowingly making false statements or overvaluing a security to a Federally insured institution can subject me to a fine of up to $1,000,000 and imprisonment for up to 20 years under 18 U.S.C. 1014.

Borrower:

Name of Borrower	
Signature	Date
Name and Title of Authorized Representative (Print or Type)	

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Guarantor:

Name of Guarantor	
Signature	Date
Name and Title of Authorized Representative (Print or Type)	

3. Additional Lender Certifications ***(SBA applicants only)***

The undersigned, as authorized representative of the Lender and on its behalf, make the following certifications:

I submit this application to SBA for approval subject to the terms and conditions outlined above. Without the participation of SBA as described in the application, I would not be willing to make this loan, and in my opinion this financial assistance is not otherwise available on reasonable terms.

I certify that none of the Lender's employees, officers, directors, or substantial stockholders (more than 10%) have a financial interest in the applicant.

I certify that the representations made and the facts stated in this application and its attachments are true, to the best of my knowledge and belief, and I have not misrepresented or omitted any material facts. I understand that knowingly making false statements or overvaluing a security to obtain a Government-guaranteed loan can subject me to a fine of up to $10,000 and imprisonment for up to five years under 18 U.S.C. 1001, and to the civil remedies available under the False Claims Act, 31 U.S.C. 3729 et seq.

Name of Lender	
Signature	Date
Name and Title of Authorized Representative (Print or Type)	

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Expires

NOTICE TO APPLICANT:

Authority for Requiring Submission of Information in Application - The applicant is hereby notified that Ex-Im Bank and SBA request the information in this application under the authority of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635 et seq.) and section 7(a)(14) of the Small Business Act ("SB Act"), (15 U.S.C. 636(a)(14)), respectively. Providing the requested information is mandatory (except, see Privacy Act notice below concerning social security number), and failure to provide the requested information may result in SBA/Ex-Im Bank being unable to determine the applicant's eligibility for financial assistance. Unless a currently valid OMB control number is displayed on this form (see upper right of each page), SBA/Ex-Im Bank may not require the information requested in this application, and applicants are not required to provide such information.

Submission of Social Security Number (Privacy Act notice) - Under the Privacy Act, the applicant is not required to provide social security number information, and failure to provide social security number may not affect any right, benefit, or privilege to which applicant is entitled. Disclosures of name and other personal identifiers are required for a benefit, however, and SBA requires an applicant seeking financial assistance to provide sufficient information to allow SBA to make a character and credit determination concerning individuals that are borrowers, principals, and guarantors. In determining whether an individual is of good character, SBA considers the person's integrity, candor, and disposition toward criminal actions. In making loans pursuant to section 7(a) of the SB Act (15 U.S.C. 636(a)(6)), SBA is required to have reasonable assurance that the loan is of sound value and will be repaid, or that it is in the best interest of the Government to grant the financial assistance requested. Additionally, SBA is specifically authorized to verify the applicant's criminal history, or lack thereof, pursuant to section 7(a)(1) of the SB Act (15 U.S.C. 636(a)(1)(B)). Further, for all forms of assistance, SBA is authorized to make all investigations necessary to ensure that a person has not engaged in acts that violate or will violate the SB Act or the Small Business Investment Act (15 U.S.C. 634 and 687b(a)). For these purposes, applicant is asked to voluntarily provide social security numbers to assist SBA in making character determinations and to distinguish the individuals listed in this application from other individuals with the same or similar name or other personal identifier.

The Privacy Act authorizes SBA to make certain "routine uses" of information protected by that Act. One such routine use is that when this information indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature, SBA may refer it to the appropriate agency, whether Federal, State , local or foreign, charged with responsibility for or otherwise involved in investigation, prosecution, enforcement or prevention of such violations. Another routine use is to assist in obtaining credit bureau reports, including business credit reports on the small business borrower and consumer credit reports and scores on the principals of the small business and guarantors on the loan for purposes of originating, servicing, and liquidating small business loans and for purposes of routine periodic loan portfolio management and lender monitoring. See 69 F.R. 58598, 58617 (and any subsequently published notices) for additional background and other routine uses.

Disclosure – Ex-Im Bank and SBA will hold confidential all information provided in the application, subject only to disclosure as required under the Freedom of Information Act (5 USC 552), the Privacy Act of 1974 (5 USC 552a), the Right to Financial Privacy Act of 1978 (12 USC 3401), or any other law or court order.

Public Burden Statement - Reporting for this collection of information is estimated to average 7.5 hours per response, including reviewing instructions, searching data sources, gathering information, and completing and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

OMB No.: 3048-0003
Expires

APPLICATION INSTRUCTIONS

PART A. PRINCIPAL PARTIES

1. **Borrower/Exporter.** Complete this section with information on the individual or corporate borrower. Provide the preliminary North American Industrial Classification System No. (NAIC) of the borrower, rather than the product being exported.

2. **Management.** Complete this section for each proprietor, partner, officer, director or other individual owning 20% or more of the borrower. 100% of ownership must be shown.

3. **Personal Guarantor(s).** List all individuals and entities that will guarantee repayment of the loan. The personal guarantee of the owner(s) is required in most cases.

4. **Lender.** Leave blank if you are applying for a Preliminary Commitment and a prospective lender has not been identified.

PART B. INFORMATION ABOUT THE TRANSACTION

Provide the loan amount, term and type of loan requested, and answer all questions in Part B. (See also Checklist item 2 below.)

PART C. CERTIFICATIONS

This section must be signed by an authorized representative of the borrower, each guarantor, and, if this is a request for a final commitment, the Lender.

CHECKLIST OF INFORMATION TO BE ATTACHED

(Note: All Attachments must be signed and dated by all person(s) signing this form.)

BACKGROUND	Yes	N/A
1. Brief resume of principals and key employees, History of business; copy of business plan, if available; identify whether sole proprietorship, general partnership, limited liability company (LLC), corporation and/or subchapter-S corporation.		
2. Explanation of use of proceeds and benefits of the loan guarantee, including details of the underlying transaction(s) for which the loan is needed, including country(s) where the buyers are located.		
TRANSACTION	**Yes**	**N/A**
3. Attach product literature. *(Ex-Im Bank applicants only)*: If applicable, attach description of items if they are nuclear, military, environmental, on the U.S. Munitions Control List, or require an export license.		
4. Copy of letter of credit and/or copy of buyer's order/contract, if available.		
5. Export credit insurance-related material (policy, application, buyer credit limit), if applicable.		
6. Copy of export license, if required.		
FINANCIAL INFORMATION	**Yes**	**N/A**
7. Business financial statements (Balance Sheet, Income Statement, statement of Cash Flows) for the last three years, if applicable, supported by the most recent Federal income tax return for the business. *(SBA applicants only)*: Also submit the last three years of signed Federal income tax returns for the business.		
8. Current financial statement (interim) dated within 90 days of the date of application filing.		
9. Aging of accounts receivable and accounts payable.		
10. Schedule of all principal officer/owner's compensation for the past three years, and current year to date [if none, please indicate].		
11. Signed joint personal financial statements(s) of each major shareholder(s)/partner(s), owner(s), of the company (with 20% or greater ownership, including assets and liabilities of both spouses) and their most recent Federal income tax return (not required for venture capital partners).		
12. Estimate of monthly cash flow for the term of the loan, highlighting the proposed export transaction.		
13. Description of type and value of proposed collateral to support the loan (company assets/export product, i.e., inventory, accounts receivable, other).		
14. Attach credit memorandum prepared by the Lender. *(SBA applicants only)*: Also attach D&B Report and Personal Credit Reports on Principals and Guarantors.		
15. *(Ex-Im Bank applicants only)*: Nonrefundable $500 application fee for a Preliminary Commitment or nonrefundable $100 application fee for a Final Commitment, whichever is applicable, by check or money order made out to the Ex-Im Bank.		
16. *(SBA applicants only)*: SBA Form 1261		
17. *(SBA applicants only)*: Copy of IRS Form 4506-T (original to be submitted to IRS by the Lender).		

OMB No.: 3048-0003
Expires

MAILING/FORWARDING INSTRUCTIONS

Please circle the appropriate answer.

1. If application is submitted by a Borrower/Exporter:

   a. Is Borrower/Exporter's requested loan amount in Part B $1,666,666 or less? □ Yes □ No

   b. Is Borrower/Exporter a small business, as defined by 13 CFR 121.105? □ Yes □ No

   If answer to *both* of the above is YES, send entire set of materials to the SBA Representative in the U.S. Export Assistance Center nearest you. Call (800) 827-5722 for the address.

   If answer to *both* of the above is NO, send entire set of materials to:
   Export-Import Bank of the U.S.
   Office of Credit Applications and Processing
   811 Vermont Avenue, NW
   Washington, DC 20571

2. If application is submitted by a Lender.

   a. Is Lender an **SBA 7(a) Participating Lender**? □ Yes □ No
   If YES, and if the loan will have a maturity of twelve (12) months or less, submit with this application a Lender's check equal to 0.25% of the guaranteed amount of the loan.

   b. Is Lender using its **Ex-Im Bank Delegated Authority**? □ Yes □ No
   If YES, send the application, the Loan Authorization Notice (two originals), the appropriate facility fee, and the $100 application fee to the Ex-Im Bank address above, **regardless of the guarantee amount**.

OR SBA USE ONLY

Loan Officer's Recommendation: □ Approve □ Decline State Reason(s):		
Signature	Title	Date
Other Recommendation if required: □ Approve □ Decline State Reason(s):		
Signature	Title	Date
THIS BLOCK TO BE COMPLETED BY SBA OFFICIAL TAKING FINAL ACTION		
□ Approve □ Decline State Reason(s):		
Signature	Title	Date

[FR Doc. 05–16441 Filed 8–18–05; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below are being submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comments on its proposal to conduct a survey of consumers to advance its understanding of the incidence of consumer fraud and to allow the FTC to better serve people who experience fraud. The survey is a follow-up to the FTC's Consumer Fraud Survey conducted in 2003 and released in August 2004.

DATES: Comments on the proposed information requests must be received on or before September 19, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Consumer Fraud Survey: FTC File No. P014412'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex E), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible. Alternatively, comments may be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consumersurvey@ftc.gov.*

Comments should also be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Nathaniel C. Wood, Assistant Director, Office of Consumer and Business Education, Bureau of Consumer Protection, Federal Trade Commission, NJ–2267, 601 New Jersey Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3407, e-mail: *consumersurvey@ftc.gov.*

SUPPLEMENTARY INFORMATION: In 2003, OMB approved the FTC's request to conduct a survey on consumer fraud and assigned OMB Control Number 3084–0125. The FTC completed the consumer research in June 2003 and issued its report, Consumer Fraud in the United States: An FTC Survey, in August 2004.[2] On April 22, 2005, the FTC published a **Federal Register** notice seeking comments from the public concerning the collection of information from consumers. *See* 70 FR 20194. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while requesting that OMB reinstate the clearance for the survey. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before September 19, 2005.

Description of the Collection of Information and Proposed Use

The FTC proposes to survey up to 3,700 consumers in order to gather specific information on the incidence of consumer fraud in the general population.[3] All information will be collected on a voluntary basis, and the identities of the consumers will remain confidential. Subject to OMB approval for the survey, the FTC has contracted with a consumer research firm to identify consumers and conduct the survey. The results will assist the FTC in determining the incidence of consumer fraud in the general population and whether the type and frequency of consumer frauds is changing, and will inform the FTC about how to best combat consumer fraud. The survey will oversample demographic groups that the 2003 survey found to be at an elevated risk of becoming victims of consumer fraud, including Hispanics, African Americans, and Native Americans. The purpose of the oversampling is to acquire information on what additional factors affect victimization within those demographic groups, and which frauds they are most likely to experience.

The FTC intends to use oversampling and a larger sample size than the 2003 survey to allow for a more in-depth analysis of the resulting data. The additional data points will allow for statistically significant samples for particular types of fraud and particular demographic characteristics. The questions will be very similar to the 2003 survey so that the results from the 2003 survey can be used as a baseline for a time-series analysis.[4] The FTC may choose to conduct another follow-up survey in approximately two years.

Estimated Hours Burden

The FTC will pretest the survey on approximately 100 respondents to ensure that all questions are easily understood. This pretest will take approximately 15 minutes per person and 25 hours as a whole (100 respondents × 15 minutes each). Answering the consumer survey will require approximately 15 minutes per respondent and 925 hours as a whole (3,700 respondents × 15 minutes each). Thus, cumulative total burden hours for the first year of the clearance will approximate 950 hours.

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] The Report is available at *http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf.*

[3] As indicated in the April 22, 2005 **Federal Register** Notice, the FTC staff originally anticipated surveying up to 10,000 consumers. *See* 70 FR 20194. However, due to budget constraints and the need for oversampling, the FTC now intends only to survey up to 3,700 consumers.

[4] The survey instrument for the 2003 survey is attached as Appendix A to the Report.

Estimated Cost Burden

The cost per respondent should be negligible. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

Christian S. White,

Acting General Counsel.

[FR Doc. 05–16464 Filed 8–18–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Planning and Evaluation (ASPE)—Area Poverty Research Centers

ACTION: Notice, correction.

SUMMARY: The Department of Health and Human Services published a document in the **Federal Register** of June 20, 2005 concerning a notice of funding availability to establish Area Poverty Research Centers. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Theresa Jarosik, 301–496–7075.

Correction

In the **Federal Register** of June 20, 2005, in **Federal Register** document 05–12018 on page 35443, in the third column, correct the Award Notices caption to read:

A successful applicant can expect to receive notification of grant award on or about September 30, 2005.

Dated: August 15, 2005.

Michael J. O'Grady,

Assistant for Secretary for Planning and Evaluation.

[FR Doc. 05–16451 Filed 8–18–05; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on September 8–9, 2005

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Leon R. Kass, M.D., Chairman) will hold its twenty-first meeting, at which, among other things, it will continue its discussion of ethical issues relating to the treatment of the aged and the long-term care of patients with dementia. Subjects discussed at past Council meetings (though not on the agenda for the present one) include: Cloning, assisted reproduction, reproductive genetics, IVF, ICSI, PGD, sex selection, inheritable genetic modification, patentability of human organisms, neuroscience, aging retardation, lifespan-extension, and organ procurement for transplantation. Publications issued by the Council to date include: Human Cloning and Human Dignity: An Ethical Inquiry (July 2002); Beyond Therapy: Biotechnology and the Pursuit of Happiness (October 2003); Being Human: Readings from the President's Council on Bioethics (December 2003); Monitoring Stem Cell Research (January 2004), Reproduction and Responsibility: The Regulation of New Biotechnologies (March 2004), and Alternative Sources of Human Pluripotent Stem Cells: A White Paper (May 2005).

DATES: The meeting will take place Thursday, September 8, 2005, from 9 a.m. to 4:30 p.m. e.t.; and Friday, September 9, 2005, from 8:30 a.m. to 12:30 p.m. e.t.

ADDRESSES: Wyndham City Center, 1143 New Hampshire Avenue, NW., Washington, DC 20037. Phone 202–775–0800.

Agenda: The meeting agenda will be posted at *http://www.bioethics.gov*.

Public Comments: The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:30 am, on Friday, September 9. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, Washington, DC 20006. Telephone: 202–296–4669. E-mail: *info@bioethics.gov*. Web site: *http://www.bioethics.gov*.

Dated: August 10, 2005.

Richard Roblin,

Acting Executive Director, The President's Council on Bioethics.

[FR Doc. 05–16449 Filed 8–18–05; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the National Coordinator for Health Information Technology; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Part A, as last amended at 69 FR 51679–51680, dated August 20, 2004, and Chapter AA, Office of the Secretary, as last amended at 69 FR 51679–51680, dated August 20, 2004, are being amended to establish a new Chapter AR, the Office of the National Coordinator for Health Information Technology (ONC) within the Office of the Secretary. The changes are as follows:

I. Under Part A, Chapter AA, Section AA.10 Organization, insert the following: ''Office of the National Coordinator for Health Information Technology (AR)''

II. Under Part A, establish a new Chapter AR, ''Office of the National Coordinator for Health Information Technology (ONC)'' to read as follows:

Section AR.00 Mission
Section AR.10 Organization
Section AR.20 Functions

Section AR.00 Mission: The Office of the National Coordinator for Health Information Technology provides leadership for the development and nationwide implementation of an interoperable health information technology infrastructure to improve the quality and efficiency of health care and the ability of consumers to manage their care and safety. The National Coordinator for Health Information Technology serves as the Secretary's principal advisor on the development, application, and use of health information technology; coordinates the Department of Health and Human Services' (HHS) health information technology programs; ensures that HHS health information technology policy and programs are coordinated with those of other relevant executive branch agencies; and to the extent permitted by law, develops, maintains, and directs the implementation of a strategic plan to guide the nationwide implementation of interoperable health information technology in both the public and private health care sectors that will reduce medical errors, improve quality, and produce greater value for health care expenditures, and coordinates outreach and consultation by the

relevant executive branch agencies with the public and private sectors. The National Coordinator for Health Information Technology provides comments and advice at the request of OMB regarding specific Federal health information technology programs.

Section AR.10 Organization: The Office of the National Coordinator for Health Information Technology (ONC) is under the direction of the National Coordinator for Health Information Technology who reports directly to the Secretary. The office consists of the following components.

A. Immediate Office of the National Coordinator (ARA)
B. Office of Health Information Technology Adoption (ARB)
C. Office of Interoperability and Standards (ARC)
D. Office of Programs and Coordination (ARE)
E. Office of Policy and Research (ARF)

Section AR.20 Functions:

A. *Immediate Office of the National Coordinator (ARA):* The Immediate Office of the National Coordinator (IO/ONC) is headed by the National Coordinator, who provides executive direction to the office. The National Coordinator is responsible for carrying out ONC's mission and implementing the functions of the ONC. The IO/ONC: (1) Ensures that key health information technology initiatives are coordinated across HHS programs; (2) ensures that health information technology policy and programs of HHS are coordinated with those of relevant executive branch agencies (including Federal commissions and advisory committees) with a goal of avoiding duplication of efforts and of helping to ensure that each agency undertakes activities primarily within the areas of its greatest expertise and technical capability; (3) review Federal health information technology investments to ensure Federal health information technology programs are meeting the objectives of the strategic plan, required under Executive Order 13335, to create a nationwide interoperable health information technology infrastructure; (4) at the request of OMB, provides comments and advice regarding specific Federal health information technology programs; (5) develops, maintains, and reports on measurable outcome goals for health information technology to assess progress within HHS and other executive branch agencies; and in the private sector, in developing and implementing a nationwide interoperable health infrastructure; and (6) fulfills the administrative, reporting, infrastructure, and budget-preparation support needs of the office.

B. *Office of Health Information Technology Adoption (ARB):* The Office of Health Information Technology Adoption (OHITA) is headed by a Director. OHITA works and coordinates with all other ONC offices to identify health information technology strategies, and works with other relevant HHS offices to implement these strategies and monitor outcomes in fulfillment of the President's goals. Specifically, in coordination with other HHS offices, OHITA: (1) Develops and coordinates strategies to incentivize adoption of health information technology, to reduce the risk of health information technology investment, and to promote health information technology diffusion; (2) coordinates the development of strategies and guidance to create electronic personal health management tools and to enhance informed consumer choice for health care; (3) coordinates with relevant executive branch agencies in promoting and transferring health information technology to public sector; (4) identifies and documents evidence on the benefits and costs of interoperable health information technology and to whom the benefits and costs accrue; (5) assesses the current state of health information technology adoption, specifies measurable goals and methods for evaluating strategies and determines approaches that can accelerate health information technology adoption in a cost-effective manner; and (6) coordinates with other offices within ONC to develop recommendations regarding health information technology compliance certification processes, evaluates compliance certification processes for health information technology and assesses its effect on health information technology implementation.

C. *Office of Interoperability and Standards (ARC):* The Office of Interoperability and Standards (OIS) is headed by a Director. OIS works with and coordinates with other offices in ONC and HHS to provide leadership in the development and implementation of a nationwide interoperable health information technology infrastructure and advance the development, adoption, and implementation of interoperable health information technology standards. Specifically, in coordination with relevant HHS offices, OIS: (1) Fosters mechanisms that support the secure and seamless exchange of health information, including the use of standards, certified technology, and requirements for a nationwide architecture; (2) manages the federal health architecture program efforts and works with Federal agencies to ensure that Federal health information systems are coordinated and interoperable with any nationwide interoperable health information technology infrastructure; (3) advances the development, adoption, and implementation of health information technology standards nationally through collaboration among public and private interests that are consistent with current efforts of the Federal Government; (4) works with relevant HHS offices to evaluate mechanisms for harmonizing security and privacy practices in an interoperable health information technology architecture; and (5) promotes the development of performance measures related to the adoption of interoperable health information technology standards.

D. *Office of Programs and Coordination (ARE):* The Office of Programs and Coordination (OPC) is headed by a Director. OPC ensures complete integration of all efforts across ONC and supports the dissemination and adoption of the Administration's policy on health information technology. Specifically, in coordination with relevant HHS offices, OPC: (1) Provides infrastructure and management support for Secretary initiatives related to health information technology including FACA and other advisory committees; (2) provides the infrastructure support for health information technology programs to coordinate interrelating activities including workgroups and subcommittees; (3) monitors and measures all outcomes in support of health information technology initiatives; and (4) develops and coordinates with relevant HHS offices, including the Assistant Secretary for Public Affairs, outreach campaigns to educate the public about health information technology and its use of Web site materials, and other documents regarding ONC activities.

E. *Office of Policy and Research (ARF):* The Office of Policy and Research (OPR) is headed by a Director. The OPR coordinates with other ONC offices and conducts studies in support of ongoing health information technology and supports and coordinates efforts that inform policy decisions related to health IT. Specifically, in coordination with relevant HHS offices, OPR: (1) Ensures the smooth and efficient implementation of policies under the direction of the National Coordinator; (2) supports efforts to determine to what extent health information technology affects public and private business practices; (3) identifies privacy and

security issues related to a nationwide health information technology infrastructure and strategies to ensure that patients' individually identifiable health information is secure and protected; (4) leads health information technology research efforts for ONC to help inform policy decisions and conducts key technical, scientific, economic, statistical and other studies related to health information technology; (5) develops procedures and pilot efforts for how medical knowledge can be collected, validated and available at the point of care; (6) facilitates discussions within HHS on the policy implications of key health information technology activities, and supports the National Coordinator in considering the policy implications of key health information technology activities; and (7) provides specialized technology and statistical expertise in support of policy proposal analysis.

Dated: August 11, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–16446 Filed 8–18–05; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Application AA213]

Building and Strengthening Haiti's National Plan for the Prevention and Treatment of HIV/AIDS, Including Support for the Coordination of a National HIV/AIDS Service Delivery Protocol and New HIV/AIDS Training Initiatives; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to provide a funding mechanism for joint activities between CDC and the Haitian Ministry of Health-Ministère de la Santé Publique et de la Population (MSPP) in the area of HIV/AIDS prevention, care and treatment. Joint activities during the project period will focus on strengthening the MSPP's capacity to lead, coordinate and oversee the monitoring and evaluation (M&E) of HIV/AIDS-related health activities, including diagnostic laboratories and programs such as VCT, prevention of mother-to-child transmission (PMTCT), and other care and treatment interventions. These goals will be accomplished through collaboration between the MSPP, CDC Haiti and its partners including, but not limited to, the National Association of State and Territorial AIDS Directors (NASTAD), American Public Health Laboratories (APHL), University Technical Assistance Program (UTAP), International Training and Education Center for HIV/AIDS (ITECH) and local partners. Collaborative activities between CDC and the MSPP are intended to produce measurable improvements in the delivery of public-sector HIV/AIDS services in Haiti.

The Catalog of Federal Domestic Assistance number for this program is 93.067.

B. Eligible Applicant

This is a single eligibility request for application (RFA) from the Haitian MSPP. No other applicants are solicited.

The national public health system in Haiti remains the primary source of care for the majority of the Haitian Population. This system is directly managed by the Haitian Ministry of Health as it is an inherently governmental role to provide a basic level of health care to ensure that a minimum standard of public health is achieved. The MSPP is responsible for the National Strategic Plan for HIV/AIDS in Haiti. This responsibility includes updating the national protocols for care and treatment and as well as national coordination of HIV/AIDS service delivery and training.

It would be inefficient and unsustainable to develop a parallel system outside of the public health system to provide prevention, treatment, and other service delivery solely for HIV/AIDS.

C. Funding

Approximately $11,620,000 is available over a five year project period. $2,324,000 will be available in FY 2005 for a 12-month budget period. The approximate date for the award is September 15, 2005. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program technical assistance, contact: Kathy Grooms, CDC Global AIDS Program, 1600 Clifton Road, NE., Mailstop E–04, Atlanta, GA 30333, Telephone: 404–639–8394, E-mail: *Kgrooms@cdc.gov.*

For financial, grants management, or budget assistance, contact: Vivian Walker, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2724, E-mail: *vew4@cdc.gov.*

Dated: August 12, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–16443 Filed 8–18–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement AA083]

Enhancement of Palliative Care Tuberculosis (TB)/Human Immunodeficiency Virus (HIV) Collaboration in the United Republic of Tanzania Under the President's Emergency Plan for AIDS Relief; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to increase and build the capacity of health care workers in Tanzania that are in the early diagnosis and treatment stage of TB and/or HIV in co-infected patients.

The purpose of the announcement is to support the efforts to increase and build the capacity of health care workers in Tanzania and Zanzibar in the early diagnosis and treatment of TB and/or HIV in co-infected patients by building upon the existing framework of health policy and programming the NTLP has itself initiated. The Government of the United Republic of Tanzania has mandated the NTLP to coordinate and implement activities necessary for the control of TB and leprosy, including HIV/AIDS among TB patients. The NTLP also has the technical ability to oversee the project, by ensuring the activities implemented are integrated into the national strategy for TB and leprosy in Tanzania.

The Catalog of Federal Domestic Assistance number for this program is 93.067.

B. Eligible Applicant

Assistance will only be provided to the National Tuberculosis and Leprosy Program (NTLP) for this project.

The NTLP is currently the only appropriate and qualified organization in Tanzania to conduct a specific set of activities to enhance palliative care TB/HIV collaboration in the United Republic of Tanzania. The NTLP has implemented the DOTS strategy since the early 1980's. The DOTS program currently provides national coverage and is a well functioning TB control program with high government and international commitment to TB control in the country, which allows the NTLP to immediately become engaged in the activities listed in this announcement.

The NTLP is uniquely positioned, in terms of legal authority and support from the Government of the Republic of Tanzania, and has the ability and credibility among Tanzanian citizens to coordinate the implementation of initiatives for TB, HIV/AIDS prevention, care and treatment services in Tanzania.

C. Funding

Approximately $1.2 million is available in FY 2005 to fund this award on September 15, 2005, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Cecil Threat, Project Officer, Global AIDS Program, c/o American Embassy, 2140 Dar es Salaam Place, Washington, DC 20521–2140, Telephone: 255 22 212 1407, Cell: 255 744 222986, Fax: 255 22 212 1462, E-mail: *Cthreat@cdc.gov.*

Dated: August 12, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–16431 Filed 8–18–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Funding Opportunity CDC–RFA–AA216]

Strengthening HIV/AIDS Prevention, Care, and Treatment Referral Services to Targeting Populations Engaged in High-Risk Behavior [1] in Haiti, as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA216.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 12, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. Sections 241 and 2421)], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with focus on 15 priority countries, including 12 in sub-Saharan Africa. The 5-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Haiti are to treat at least 25,000 HIV-infected individuals; care for 125,000 HIV affected individuals, including orphans.

Purpose: An essential element of preventing new cases of HIV infection in Haiti is to ensure as much of the population as possible has adequate access to screening, treatment, and care facilities. Haiti's HIV prevalence rate in adults is estimated as between 3.1 and 5.6 percent, according to the Haitian Ministry of Health-Ministére de la Santé Publique et de la Population (MSPP) and the *2004 Annual Report* from the Joint United Nations Programme on HIV and AIDS (UNAIDS), respectively. Access to prevention and treatment is limited among the Haitian population because of an underdeveloped public health infrastructure and a lack of clinical capacity.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan for AIDS Relief and one (or more) of the following performance goal(s) for the National Center for HIV, Sexually Transmitted Diseases and Tuberculosis Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) within HHS: Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and

[1] Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing abstinence and faithfulness behavior-change interventions.

treatment services and to strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

This announcement is only for non-research activities supported by HHS, including the Centers for Disease Control and Prevention (CDC). 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.*

Activities

The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Haiti. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable, progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as, progress towards the sustainability of activities.

Applications should describe activities in detail as part of a 4-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the 5-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Haiti will review as part of an annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance towards achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program are as follows:

1. Establish an anonymous care center to address prevention, treatment and care issues in the populations engaged in high-risk behavior [2] in the Haitian capital, Port-au-Prince. The goal of this activity will be to decrease the rate of HIV transmission in this population, including men who have sex with men (MSM).

2. Develop a discreet awareness campaign in local languages to promote the prevention, care and treatment provided by anonymous care centers in activity number one.

3. Develop a referral network to help HIV-positive MSM access advanced care, treatment and support from local partners.

4. Develop and implement an effective monitoring and evaluation (M&E) strategy to ensure the impacts of the center and the referral system are recorded and reported in a responsive and timely manner, in conformity with strategic-information guidance established by the Office of the U.S. Global AIDS Coordinator.

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined in this announcement.

Administration

The winning applicant must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement (See HHS Activities and Reporting sections below for details), and comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS/CDC activities for this program are as follows:

1. Provide scientific and technical assistance in developing the awardee's operational plan.

2. Provide ongoing technical assistance in program implementation.

3. Assist the awardee in assessments of the program's operations to determine the overall effectiveness of the program.

4. Provide equipment and commodities to new partner clinics.

5. Provide drugs to treat opportunistic infections (OI) and sexually transmitted infections (STI) necessary for service delivery programs. HHS/CDC will procure these drugs through a transparent and competitive process and distributed them through Rational Pharmaceutical Management Plus (RPM+)/USAID.

6. Support the development of an electronic medical record (EMR) database system and a surveillance database system, in conformity with strategic-information guidance established by the Office of the U.S. Global AIDS Coordinator.

7. Provide through a transparent and competitive process and install the hardware necessary for use in the database systems described above (#6).

8. Support the annual technical review of service-delivery programs based in the new clinics.

9. Provide assistance in organizing partner network meetings.

10. Provide technical assistance from HHS-headquarters and the in-country HHS office in Haiti to assure other related U.S. Government activities are well-coordinated with the national program.

11. Organize an orientation meeting with the grantee to brief it on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

12. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

13. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

14. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

[2] Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing abstinence and faithfulness behavior-change interventions.

15. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

16. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

17. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

18. 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, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

19. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: FY05.

Approximate Total Funding: $650,000. (This amount is an estimate for the entire five year project period, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $130,000. (This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: $130,000.

Ceiling of Award Range: $130,000.

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Public and private non-profit and for-profit organizations may submit applications, such as:

- Public, non-profit organizations.
- Private, non-profit organizations.
- For-profit organizations.
- Small, minority-owned, and women-owned businesses.
- Colleges.
- Universities.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.

In addition, applicants must meet the criteria listed below:

1. Be indigenous to Haiti;
2. Have a minimum of three years of experience in HIV/AIDS and tuberculosis care; and
3. Have documented experience of providing fully integrated HIV/AIDS and health care to populations engaged in high-risk behavior.[3]

III.2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range is requested, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See Section ''IV.3. Submission Dates and Times'' for more information on deadlines.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: HHS strongly encourages you to submit the application electronically by using the forms and instructions posted for this announcement on *http://www.Grants.gov*.

Paper Submission: Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 30. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Number all pages of the application sequentially from page 1 (application Face Page) to the end of the application, including charts, figures, tables, and appendices.
- Printed only on one side of the page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Submitted in English.

Your narrative should address activities to be conducted over the

[3] Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing abstinence and faithfulness behavior-change interventions.

entire project period, and must include the following items in the order listed:

1. *Executive Summary:* Provide a clear and concise summary of the proposed goals, major objectives and activities required to achieve the program goals and justify the amount of funding requested for the first budget year of this cooperative agreement.

2. Need.

Describe Haiti's need for the services described in the activities section. Include any data on STI and HIV prevalence rates in Haiti.

3. Capacity.

Describe the current capability and capacity of the organization to perform the activities described in this RFA.

4. Expansion.

(a) Identify and secure appropriate (accessible and discreet) and suitable rental property for new confidential voluntary counseling and testing (VCT) clinics that are well equipped to deliver prevention, care and treatment services for MSM population.

(b) Recruit and hire confidential VCT clinical personnel to provide a comprehensive HIV/AIDS service delivery facility addressing the needs of the target population.

5. Training.

(a) Coordinate training to local health care Professionals, including physicians, nurses, laboratory and pharmacy technicians, and peer educators. This training will include:

(1) Train how to design, implement and evaluate confidential VCT program sites.

(2) Train how to maintain laboratory equipment.

(3) Train in laboratory safety and proper disposal of bio-hazardous materials protocol.

(4) Train in the use of universal precautions and the management of needle stick or splash injuries.

(b) Provide regular routine in-service trainings for lab personnel to review new and best practice techniques, and to request ''insider insight,'' an account of implementation success and challenges, in the effort to identify gaps in resources or effectiveness of particular protocols.

6. Laboratory Capacity.

6.1. Provide basic laboratory services to support HIV/AIDS diagnosis and treatment.

(a) Perform CD4 counts.

(b) Perform complete blood counts.

(c) Perform HIV rapid testing.

(d) Perform confirmatory HIV/AIDS testing.

(e) Test for sexually transmitted infections.

(f) Provide pre- and post-test counseling for recipients of HIV test results.

(g) Provide referrals to appropriate prevention, treatment, care and support services to HIV-infected patients.

7. Commodities.

Procure drug and complementary commodities for service delivery programs.

8. Outreach.

(a) Provide educational services in awareness, prevention and treatment of HIV/AIDS to high-risk populations of MSM.

(1) Develop target population-specific messages and health promotion strategies to raise awareness about the new confidential VCT clinics. Peer educators may be used to accomplish this activity.

(2) Develop specific interventions for sub-populations in the MSM community, including partner notification and support.

(b) Gather data to establish baseline information regarding the target for first usage Haitian National Police (PNH) population's knowledge about HIV/AIDS transmission, as well as this population's sexual practices.

(1) Assess attitudes and behaviors within the target PNH population.

(2) Develop and implement long-term behavioral change communication campaigns.

(3) Promote condom distribution and use.

(4) Develop and implement behavior change strategies and long-term campaigns, including:

a. Information, education and communication (IEC).

b. Condom distribution.

c. Targeted accessibility planning.

9. Management and Supervision.

(a) Manage and supervise clinic operations and staff.

(b) Implement report-writing requirements.

(c) Develop and implement financial management systems.

(d) Engage in strategic plan development.

(e) Network with local partners within the private and public sector to ensure an effective patient referral system between confidential VCT services and antiretroviral treatment (ART) service delivery networks.

10. Monitoring and Evaluation.

Implement M&E strategies. These strategies should assess the following performance indicators:

(a) The number of people tested.

(b) The number of people provided with treatment and services.

(c) The segment of the target population served.

(d) The number and type of testing performed.

(e) The number of referrals made to appropriate prevention, treatment, care and support services.

(f) The number of training courses held.

(g) The number and type of participants in these training courses.

(h) The number of trainee evaluations filed, and the findings of these evaluations.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Budget Justification.
- Curriculum Vitas or resumes.
- Organizational Charts.
- Letters of Support.

The budget justification will not count in the narrative page limit.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, please see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.pdf.*

If your application form does not have a DUNS number field, please write the DUNS number at the top of the first page of the application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 12, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern time on the deadline date.

You may submit your applications electronically at *http://www.grants.gov.* We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov.* We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has

submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives the submission after the closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of the submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: (770) 488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If the submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may not be used for construction.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception of nevirapine in Prevention of Mother-to-Child Transmission (PMTCT) cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.
- No funds appropriated under this act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all sub-agreements under this award. These provisions must be express terms and conditions of the sub-agreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents

and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address

Electronic Submission: HHS/CDC strongly encourages you to submit electronically at: *http://www.Grants.gov.* You will be able to download a copy of the application package from *http://www.Grants.gov,* complete it offline, and then upload and submit the application via the Grants.gov Web site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov,* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommend that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff; or

Paper Submission: Applicants should submit the original and two hard copies of the application by mail or express delivery service to the following address: Technical Information Management Section—AA216, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and they will be an element of evaluation.

We will evaluate your application against the following criteria:

- Need (10 Points). To what extent does the applicant justify the need for this program within the target community?
- Work Plan (20 Points). Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Haiti to achieving the goals of the Emergency Plan? Is the plan adequate to carry out the proposed objectives? How complete and comprehensive is the plan for the entire project period? Does the plan include quantitative process and outcome measures tied to the numerical goals of the President's Emergency Plan for AIDS Relief?
- Monitoring Evaluation and Reporting (20 points). Does the applicant describe a system for reviewing and adjusting program activities based on monitoring information? Does the plan include indicators developed for each program milestone, and incorporated into the financial and programmatic reports? Are all indicators drawn from the Emergency Plan Indicator Guide? Is the system able to generate financial and program reports showing disbursement of funds, and progress towards achieving the objectives of the President's Emergency Plan?
- Methods (15 Points). Are the proposed methods feasible? To what extent will they accomplish the numerical goals of the President's Emergency Plan?
- Personnel (15 Points). Do the staff members have appropriate experience, including local-language skills? Are the staff roles clearly defined? As described, will the staff be sufficient to accomplish the program goals?
- Program Experience (20 Points). Is the applicant's program experience relevant to the provision of the services it intends to provide? Does the applicant have experience working with high risk populations?
- Budget and Justification (Reviewed, but not scored). Is the proposed budget for conducting program activities itemized and well justified? Is it consistent with planned program activities?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office in Haiti. The panel can include both Federal and non-Federal participants.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet Address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions..
- AR–6 Patient Care.
- AR–8 Public Health System Reporting Requirements.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS 5161–1 application in your Grants.gov electronic submission only. Applicants should refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-11Certificates.pdf.* Once you have filled out the form, please attach it to your Grants.gov submission as Other Attachments Form.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Haiti.

f. Additional Requested Information.

2. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of President's Emergency Plan for AIDS Relief for Haiti.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than ninety 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Kathy Grooms, HHS/CDC Global AIDS Program, 1600 Clifton Road, NE., Mailstop E–04, Atlanta, GA 30333, Telephone: 404–639–8394, E-mail: *Kgrooms@cdc.gov.*

For financial, grants management, or budget assistance, contact: Vivian Walker, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2724, E-mail: *VEW4@CDC.GOV.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov.*

Dated: August 12, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16428 Filed 8–18–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

HIV Prevention, Care and Support, and Confidential Counseling and Testing in Lagos State and Rivers State in the Republic of Nigeria, as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA187.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 12, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. Sections 241 and 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Nigeria are to treat at least 350,000 HIV-infected individuals and care for 1,750,000 HIV-affected individuals, including orphans.

Purpose

The purpose of the program is to provide HIV prevention, care and support, and confidential counseling and testing to persons at increased risk of HIV infection in Lagos State and Rivers State, Nigeria.

The Global AIDS Program (GAP) within the U.S. Department of Health and Human Services (HHS) has established field operations to support national HIV/AIDS control programs in 25 countries. HHS/GAP exists to help prevent HIV infection, improve care and support, and build capacity to address

the global AIDS pandemic. HHS/GAP provides financial and technical assistance through partnerships with governments, community- and faith-based organizations, the private sector, and national and international entities working in the 25 resource-constrained countries. HHS/GAP works with the Centers for Disease Control and Prevention (CDC), Health Resources and Services Administration (HRSA), the National Institutes of Health (NIH), within HHS; the United States Agency for International Development (USAID); the Peace Corps; the U.S. Departments of State, Labor and Defense, and other agencies and organizations. These efforts complement multilateral efforts, including the Joint United Nations Programme on HIV/AIDS (UNAIDS); the Global Fund to Fight HIV, Tuberculosis and Malaria; World Bank funding; and private-sector donation programs.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through the President's Emergency Plan for AIDS Relief (The Emergency Plan). Through this new initiative, HHS/GAP will continue to work with host countries to strengthen capacity and expand activities in the areas of (1) primary HIV prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance and training. Targeted countries represent those with the most severe epidemics where the potential for impact is greatest and where U.S. Government agencies are already active. Nigeria is one of these targeted countries.

To carry out its activities in these countries, HHS is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic. HHS'' program of assistance to Nigeria focuses on several areas of national priority, including scaling up activities and funding for HIV prevention, care, and treatment; improving the national blood safety program; HIV sentinel surveillance; and supporting the National AIDS and Sexually Transmitted Disease (STD) Control Program.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan for AIDS Relief and one (or more) of the following performance goal(s) for the CDC National Center for HIV, STD, and TB Prevention (NCHSTP), within HHS: By 2010, work with other countries, international organizations, the U.S. Department of State, USAID, and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among young persons 15 to 24 years of age; reducing HIV transmission; and improving care of persons living with HIV. They also will contribute to the global goals of the Emergency Plan which are as follows: within five years treat two million HIV-infected persons with effective combination anti-retroviral therapy (ART); prevent seven million new HIV infections; and care for ten million HIV-infected and affected persons, including those orphaned and left vulnerable by HIV/AIDS. Some of the specific measurable outputs from this program will be the number of young people who receive HIV behavior-change interventions through the program; the number of persons trained to provide HIV behavior change services for youth; the number of community leaders, religious leaders, and parents involved with the program; the number of young people who receive confidential counseling and testing and care and support through the program; and the documentation of the impact of the program on reducing the risk of infection in youth (up to 30 years of age) in Nigeria.

This announcement is only for non-research activities supported by HHS, including CDC. 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.*

Activities

The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Nigeria. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable, progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Nigeria will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program are as follows:

1. Provide HIV prevention interventions in local languages to out-of-school youth (up to 30 years of age) who are engaged or could become

engaged in high-risk behaviors [1] in Lagos and Rivers State, particularly at motor parks. Awardees may not implement condom social marketing without also promoting abstinence and faithfulness behavior-change interventions.

2. Implement basic care and support in Lagos State, particularly at motor parks.

3. Strengthen and expand existing linkages with private and public health facilities for confidential screening/testing of HIV and related diseases.

4. Provide confidential counseling and testing in Lagos State, particularly at motor parks. Strengthen and expand existing linkages with private and public health facilities for confidential screening/testing of HIV and related diseases.

5. Collect and analyze data on all of these services.

Awardee should ensure that all of the above activities integrate into the national HIV/AIDS strategy.

Interventions should promote the ''ABC model.'' Methods and strategies should emphasize abstinence for youth and other unmarried persons, mutual faithfulness and partner reduction for sexually active adults, and correct and consistent use of condoms by those populations who are engaged in high-risk behaviors. Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing the abstinence and faithfulness behavior-change interventions outlined in the preceding paragraph.

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined in this announcement.

Administration

Awardees must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement (See HHS Activities and Reporting sections below for details), and comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS/CDC Activities for this program are as follows:

1. Organize an orientation meeting with the grantee to brief it on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. 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, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

9. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

10. Provide guidance on selection of focus populations to ensure most at-risk populations are reached. In partnership with the grantee, HHS will participate in field activities to identify appropriate populations, which are most at-risk, and conduct needs assessments. The grantee will establish baseline information through appropriate formative processes, in collaboration with HHS.

11. Provide technical assistance on the selection of behavior or prevention interventions, approaches to the provision of care and support, and approaches to confidential counseling and testing. HHS/CDC, in collaboration with the grantee, will conduct focus group discussions and in-depth interviews of potential beneficiary communities to determine ideal points of service, information, education and communication messages and channels.

12. Assist in the coordination of core interventions with other providers. Based on information and data gathered from the Nigerian federal and state governments and interagency coordination meetings, HHS/CDC will assist grantee to link its project activities to relevant projects implemented by other stakeholders as a way to leverage funding and inputs, which can include lessons learned and best practices.

13. Assist in the evaluation and assessment of interventions funded by this program. The grantee will negotiate project goals and objectives, outputs and outcomes, and appropriate time-lines for project activities, mid-term and end of project reviews and evaluation with HHS/CDC.

14. Monitor progress in achieving the purpose of this program, as well as project objectives. In collaboration with grantee, HHS/CDC will conduct field trips to supervise and monitor project progress and ensure judicious use of U.S. Government resources.

[1] Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing abstinence and faithfulness behavior-change interventions.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $1,400,000. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $350,000 (This amount is for the first 12-month budget period, and includes direct costs.

Floor of Award Range: None.

Ceiling of Award Range: $350,000. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 23, 2005.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Public and private non-profit organizations and governments and their agencies may submit applications, such as:

- Public, non-profit organizations.
- Private, non-profit organizations.
- Small, minority-owned, and women-owned businesses.
- Universities.
- Colleges.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.

We are limiting competition for this grant to the types of organizations listed above because of the uniqueness of the specific activities for this project and the location where the majority of the work will be performed, in multiple and diverse geographic locations throughout Nigeria. The types of organizations listed above have direct experience with performing this type of activity. We will limit competition to organizations that possess the following:

- A proven track record in successfully managing effective and sustainable health programs in Nigeria.
- Experience and ability in efficiently implementing programs to identify and monitor the work of sub-grantees and technical consultants in Nigeria.
- Extensive knowledge of the Nigerian health structure from the national to the district levels.
- Knowledge and working-level contacts and relationships with networks of Governmental Ministries at the federal and state levels.
- Credentials that allow the organization to work legally in Nigeria, and an existing office in one or more critical locations in Nigeria.
- Staff with appropriate local language skills.

III.2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

HHS strongly encourages you to submit the application electronically using the forms and instructions posted for this announcement on *http://www.grants.gov.*

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: (770) 488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 20 pages. If your narrative exceeds the page limit, we will review only the pages within the page limit.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- All pages should be numbered sequentially from page one (Application Face Page) to the end of the application, including charts, figures, tables, and appendices.
- Must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Need for Services.

Describe the proposed populations for each of the services to be provided (prevention, care and support, and confidential counseling and testing). This should include demographics; estimated HIV/AIDS or STD prevalence (if data is available, provide data source); and services currently being provided and by which organizations.

- Experience in Providing HIV Services (prevention, care and support, and confidential counseling and testing).

Describe how your organization has provided these services in Lagos State (for Rivers State, describe experience with prevention services). Also describe how your organization has worked with other organizations providing HIV services in Lagos and Rivers State.

- Plan to Provide Prevention, Care and Support, and Confidential Counseling and Testing Services.

For each service, specify numbers to be served, recruitment strategies, services to be provided, and coordination with existing services. List goals and objectives in this section. Goals are broad statements of programmatic intent. Objectives should be specific (who and how many) and measurable, and describe what is expected (*e.g.*, who will be tested). Provide letters of support from the State or Federal Ministry of Health, the National Action Committee on AIDS, or from other organizations providing HIV services in Lagos State indicating previous collaborative relationships and/or support for this program.

• Management and Personnel.

Describe the qualifications and experience for management and technical staff who will work on this project. Include a description of responsibilities for each person. Indicate whether proposed persons are available to work on this project and if not, describe plans to recruit needed staff.

• Program Requirements.

Program requirements may include relevant national guidelines, training curricula and modules, etc.

• Plan to Evaluate Programmatic Efforts and Administrative and Accounting Plan.

Include a description of how you will measure services provided and the manner in which they were provided (*i.e.*, quality assurance). Describe your plan to manage the resources of this program and monitor and audit expenditures.

• Budget (not included in page limit).

Your budget should highlight any supplies mentioned in the Program Requirements and any proposed capital expenditure. Guidance for completing your budget can be found on the United States Government Web site at the following address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. The additional information includes but is not limited to the following:

• Organizational Charts.
• Curriculum Vitas or Resumes.
• Letters of Support.

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 12, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date.

You may submit your application electronically at *http://www.grants.gov.* We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov.* We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically through Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If HHS/CDC receives your application after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the application as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: (770) 488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that your application did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

• Funds may not be used for research.
• Reimbursement of pre-award costs is not allowed.
• Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from HHS/CDC GAP Nigeria.
• Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
• Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
• All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
• The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following

exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organization regardless of their location.

• The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities, (including program management and operations, and delivery of prevention and care services for which funds are required).

• You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/ authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.

• A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

Funds May Be Used for

• Hiring of staff needed to operate the program and the various activities sponsored by the program.

• Coordination of the program.

• Purchase of supplies, equipment, vehicles, and commodities needed to provide the interventions, acquired in a transparent and competitive process.

• Renovations to clinics and community facilities as needed; the awardee shall make the selection of any contractors to perform such renovations in a transparent and competitive process.

• Support for interventions to reduce socio-economic vulnerability of young people, especially young girls, orphans, and other at-risk youth.

• Conduct assessments to document the impact of various interventions.

You may find guidance for completing the budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address

HHS/CDC strongly encourages you to submit electronically at *http://www.Grants.gov.* You will be able to download a copy of the application package from *http://www.grants.gov,* complete it off-line, and then upload and submit the application via the Grants.gov Web site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit back-up paper submission of the application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will

consider the electronic version the official submission.

We strongly recommend that the applicant submit the grant application using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff; or

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management—AA187, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Approach to Providing Services (30 points).

Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Nigeria to achieving the goals of the Emergency Plan? Does the applicant provide goals and objectives? Are the objectives specific and measurable? Do they address key indicators (*e.g.*, number of health care workers trained, number of persons provided prevention and care)? Does the applicant describe how it will recruit members of the target population for prevention and care? Is the quality of the plan for each of the interventions adequate? To what extent does the applicant propose to work with other organizations? Does the applicant provide letters of support?

2. Experience in Providing HIV Interventions (25 points).

To what extent does the applicant provide the required HIV interventions (prevention, care and support, confidential counseling and testing) in Lagos State? Does the applicant play a primary or only supporting role in providing these interventions? To what extent has the applicant worked with other organizations that provide HIV services in Lagos State? Does the applicant demonstrate knowledge of the cultural and political realities in Nigeria?

3. Personnel (20 points).

How well-qualified are the key staff (both management and technical) to carry out their proposed responsibilities, including by possessing local-language skills. Does the applicant describe a recruiting plan for positions not currently filled?

4. Understanding of the Need for Interventions (15 points).

Does the applicant demonstrate an understanding of the proposed target population (*i.e.*, demographics, HIV/AIDS or STD prevalence, risk factors)? How well does the applicant describe existing HIV interventions?

5. Administrative and Accounting/Evaluation Plan (10 points).

Is the plan to measure impact of interventions, and the manner in which they will be provided, adequate? Is the plan to manage the resources of this program and monitor and audit expenditures adequate?

6. Budget (Reviewed, but not scored).

Is the budget itemized, well-justified and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Nigeria?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and the HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

While U.S.-based organizations are eligible to apply, we will give preference to existing national/Nigerian organizations. It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order. No award will be made without the concurrence of the U.S. Embassy Abuja and the CDC representative in Nigeria.

V.3. Anticipated Announcement and Award Date

September 23, 2005.

VI. Award Administration Information Award Notices

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–5 HIV Program Review Panel Requirements.
- AR–6 Patient Care.
- AR–8 Public Health System Reporting Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.
- AR–21 Small, Minority, and Women-Owned Business.
- AR–23 States and Faith-Based Organizations.

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

You need to include an additional Certifications form from the PHS5161–1 application in the Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1-Certificates.pdf*. Once you have filled out the form, please attach it to the Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Nigeria.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Nigeria.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2700.

For program technical assistance, contact: Joseph Nnorom, MD, MPH, GAP, Nigeria Country Team, NCHSTP, HHS/CDC, Address: HHS/CDC, U.S. Embassy, No. 9 Mambila Street (off Aso Drive), Maitama District, Abuja, Nigeria, Telephone: (234) 9–234 0783; (234) 9–670 0798, E-mail: *JNnorom@cdc.gov*.

For financial, grants management, or budget assistance, contact: Diane Flournoy, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2072, E-mail: *DFlournoy@cdc.gov*.

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov*.

Dated: August 12, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16429 Filed 8–18–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strengthen and Expand the National Capacity for TB/HIV National Program through Support to the Central Tuberculosis (TB) Unit of the Ministry of Health of the Republic of Haiti for Improved TB/HIV Integration

Announcement Type: New Competitive Cooperative Agreement.

Funding Opportunity Number: AA170.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates:

Application Deadline: September 12, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. 241 and 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Purpose: President Bush's Emergency Plan for AIDS Relief (The Emergency Plan) has called for immediate action to turn the tide of HIV/AIDS in Africa and the Caribbean. The Emergency Plan hopes to prevent at least seven million new cases of HIV infection; provide treatment to two million HIV-infected people; and provide care to ten million people infected and affected by HIV/AIDS, including orphans and vulnerable children, world wide by 2010. An essential element of preventing new cases of HIV is to ensure that high-risk groups have adequate access to screening, treatment, and care facilities. Haiti's HIV prevalence rate in adults is reported to be 5.6 percent, according to the Joint United Nations Programme on HIV/AIDS (UNAIDS) 2004 Annual Report. Access to prevention and treatment is limited to the Haitian population because of the underdeveloped public health infrastructure and lack of clinical capacity. To improve this capacity, this cooperative agreement will provide much needed funding and resources under the President's Emergency Plan.

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Haiti are to treat at least 25,000 HIV-infected individuals and care for 125,000 HIV-affected individuals, including orphans.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for HIV, STD and TB Prevention (NCHSTP) of the Centers for Disease Control (CDC) within HHS: Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment; strengthen the capacity nationwide to monitor the epidemic; develop and implement effective HIV prevention interventions; and evaluate prevention programs.

This announcement is only for non-research activities supported by HHS. If applicants propose research, we 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.*

Activities:

Awardee activities for this program are as follows:

1. Provide technical assistance to the National TB Program of the Haitian Ministry of Health (MOH) to assist in TB/HIV integrated services and strengthen the diagnosis and treatment of TB among HIV positive patients.

2. Reinforce the capacity of the Haitian MOH and the Departmental Directorates to perform supervision and quality assurance/quality control of TB/HIV care at the departmental and local levels.

3. Conduct a needs assessment of stand-alone TB clinics in Haiti, and their capacity for detecting and managing dual-infected patients.

4. Increase capacity for training TB providers in confidential HIV

counseling and testing (CT), through training-of-trainers in local languages, and procurement of training materials in a transparent process.

5. Integrate surveillance of HIV into the existing electronic TB surveillance system, and create linkages with the HIV surveillance system.

6. Assist the Haitian MOH in the revision of norms and standards for the management of HIV-infected TB patients, and develop guidelines, training materials, and algorithms in local languages based on the revised norms and standards.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Provide technical assistance in the areas of TB/HIV surveillance, monitoring and evaluation, and developing guidelines, norms, and training materials, facilitated by the HHS Atlanta Country Support Team and the HHS Haiti Technical Officers for Care and Treatment, Surveillance, and TB/HIV.

2. Support for an electronic medical record (EMR) database system, and surveillance database system, for TB/HIV case notification, in compliance with strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

3. Support installation of hardware necessary for the use of database systems and provide technical assistance on database use and maintenance needs.

4. Support the annual technical review of the national AIDS/TB/STI program in Haiti.

5. Provide equipment and commodities for new partner clinics, purchased in a transparent and competitive process.

6. Support the annual technical review of service-delivery programs of new clinics.

7. Assist in organizing partner network meetings.

Additional HHS activities include the following:

1. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $1,000,000 (This amount is an estimate for the entire five-year project period, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $200,000 (This amount is for the first 12-month budget period, and includes direct costs.).

Floor of Award Range: $200,000 (This amount is for the first 12-month budget period, and includes direct costs.)

Ceiling of Award Range: $200,000 (This amount is for the first 12-month budget period, and includes direct costs.)

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

To meet the eligibility criteria for this program announcement, applicants must be indigenous to Haiti; must have documented experience in TB/HIV; must currently be providing extensive technical assistance to the MOH TB/HIV program; must have extensive experience in collecting samples and implementing Directly Observed Therapy Strategy (DOTS) in community settings in local languages; and must already be integrated into the national TB/HIV program.

This cooperative agreement seeks to fund activities that will integrate TB and HIV diagnosis and treatment. This program depends upon the ability of the grantee to work with these two separate national programs and strive to integrate them. At the end of the first year of the project period, the grantee must be detecting HIV positive individuals and referring them for treatment at TB sites, and detecting individuals with active TB and referring them for treatment by the national TB program. The integration of these two programs will result in identifying more HIV and TB patients. Both target groups are at high risk for transmission, and heretofore the national prevention effort in Haiti is not addressing them in a consistent manner.

To meet the goals of the Emergency Plan within the time allotted, any program applicant must be able to demonstrate it already has developed a working relationship and has experience with both the Haitian national TB program and the Haitian national program to control HIV/AIDS. These are two separate departments in the MOH, and will be a challenge to integrate because of a lack of support

systems to treat TB/HIV in an integrated manner. Therefore, an organization must demonstrate it has at least three to five years of experience in working with both the Haitian national TB and HIV/AIDS control programs.

Eligible applicants should also demonstrate capacity to coordinate their activities with HHS and other members of the United States Government.

III.2. Cost Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, HHS will consider your application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement on *www.grants.gov,* the official Federal agency wide E-grant Web site. Only applicants who apply on-line are permitted to forego the paper copy submission of all application forms.

Paper Submission: Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 30. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Double-spaced
- Number all pages of the application sequentially from page one (Application Face Page) to the end of the application, including charts, figures, tables, and appendices.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Submitted in English

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Executive Summary

Provide a clear and concise summary of the proposed goals, major objectives and activities required for achievement of program goals and amount of funding requested for budget year one of this cooperative agreement.

- Need: Description of need for strengthened TB services for HIV-infected TB patients in Haiti. Include data on TB incidence rates among HIV positive persons, TB incidence rates in the general population, and the status of existing TB and TB/HIV control activities.
- Capacity: Current capability/capacity of organization to perform required elements of this program announcement, and to support the strengthening and expansion of the national TB diagnostic and treatment services for HIV positive patients.
- Expansion: Describe detailed plans for use of funds to expand and improve existing TB diagnosis and treatment services for HIV positive patients.
- Personnel: Plans for recruitment of staff and personnel to carry out the proposed activities.
- Training: Plans for training of current staff in TB screening and treatment among HIV positive patients, and HIV CT for TB staff.
- Laboratory Capacity: Provide basic laboratory services in support of TB diagnosis and treatment for HIV positive patients.
- Commodities: Procure commodities necessary for screening and treatment of TB disease.
- Outreach: Provide educational services to address awareness, prevention, and treatment of TB in communities affected by HIV/AIDS.
- Monitoring and Evaluation: Implement monitoring and evaluation strategies to assess programmatic effectiveness, as well as provision of the required targets for Emergency Plan reporting, including:

1. Number of service outlets providing clinical prophylaxis and/or treatment for TB for HIV-infected individuals (diagnosed or presumed).
2. Number of HIV-infected individuals (diagnosed or presumed) who receive clinical prophylaxis and/or treatment for TB.
3. Number of individuals trained to provide clinical prophylaxis and/or treatment for TB to HIV-infected individuals (diagnosed or presumed).
4. Number of people trained in the lab for TB/HIV diagnosis.
5. Number of TB/HIV service outlets.
6. Number of TB patients tested for HIV.

- Budget: A budget is required for the first year only, and the budget justification will not be counted in the stated page limit.

Additional information may be included in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes:

- Budget and Budget Justification.
- Curriculum Vitas or Resumes.
- Organizational Charts.
- Letters of Support.
- Job descriptions of proposed key positions to be created for the activity.
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms.
- Applicant's Corporate Capability Statement.
- Evidence of Legal Organizational Structure.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the HHS/CDC web site at: *http://*

www.cdc.gov/od/pgo/funding/grantmain.pdf. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 12, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *www.grants.gov.* We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov.* Electronic applications will be considered as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically through Grants.gov [*http://www.grants.gov*], the application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as having been received by the deadline.

If a hard copy application is submitted, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. You will be notified that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception of nevirapine in Prevention of Mother-to-Child Transmission (PMTCT) cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.
- No funds appropriated under this act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt

organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all sub-agreements under this award. These provisions must be express terms and conditions of the sub-agreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.''' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address

Electronic Submission: HHS/CDC strongly encourages applicants to submit electronically at *www.Grants.gov.* You will be able to download a copy of the application package from *www.Grants.gov*, complete it off-line, and then upload and submit the application via the Grants.gov Web site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at support@grants.gov or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of the application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommend that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, a PDF file may be submitted. You may find directions for creating PDF files on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff; or

Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—AA170, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. You must submit these measures of effectiveness with your application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Monitoring Evaluation and Reporting (25 Points)

Implement a system for reviewing and adjusting program activities based on monitoring information. Applicants must develop indicators for each program milestone and incorporate them into the financial and programmatic reports. All indicators must come from the President's Emergency Plan for AIDS Relief Indicator Guide. Applicants must be able to generate financial and program reports to show disbursement of funds, and progress towards achieving program objectives.

2. Plan (25 Points)

Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Haiti to achieve the goals of the Emergency Plan? Is the plan adequate to carry out the proposed objectives? How complete and comprehensive is the plan for the entire project period? Does the plan include quantitative process and outcome measures? Does the applicant demonstrate the ability to deliver the proposed interventions in a culturally appropriate manner and in local languages?

3. Need (20 Points)

Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project and meet the goals of the Emergency Plan? To what extent does the applicant justify the need for this program within the target community?

4. Methods (15 Points)

Are the proposed methods feasible? To what extent will they accomplish the program goals? Does the application include an overall design strategy,

including measurable time lines, clear monitoring and evaluation procedures, and specific activities for meeting the proposed objectives? Does the applicant describe a plan to progressively build the capacity of local organizations and of target beneficiaries and communities to respond to the epidemic?

5. Personnel (15 Points)

Do the staff members have appropriate experience? Are the staff roles clearly defined? As described, will the staff be sufficient to accomplish the program goals and do they have the ability to perform activities in local languages?

6. Budget and Justification (Reviewed But Not Scored)

Is the itemized budget for conducting the project, along with justification, reasonable, and consistent with stated objectives and planned program activities?

Guidance for completing your budget can be found on the USG Web site, at the following address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

In addition, the following factors may affect the funding decision:

- Maintaining geographic diversity.
- Preference to organizations in certain geographic areas.

HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–6 Patient Care
- AR–8 Public Health Reporting Requirements
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–25 Release and Sharing of Data

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS5161–1 application in the Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1-Certificates.pdf.* Once you have filled out the form, it should be attached to the Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities and Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activities and Objectives.

d. Budget and budget narrative with justification.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for Haiti.

f. Additional Information.

2. Annual Reports are due within each budget period. The report should detail progress toward achieving program milestones and projected next year activities. Indicators must be developed for each program milestone and incorporated into the annual financial and programmatic reports. All indicators need to be drawn from The Emergency Plan.

3. Financial status report, no more than 90 days after the end of the budget period. The financial report must show obligations, disbursements and funds remaining by program activity. Indicators must be developed for each program milestone and incorporated into the periodic financial and programmatic reports. All indicators need to be drawn from The Emergency Plan Indicator Guide.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Kathy Grooms, Country Program Officer, HHS/CDC, NCHSTP, Global AIDS Program, 6600 Clifton Road, MS E–04, Atlanta, GA 30333, Telephone: 404–639–8394, E-mail: *Kgrooms@cdc.gov.*

For financial, grants management, or budget assistance, contact: Vivian Walker, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2724, E-mail: *VEW4@CDC.GOV.*

VIII. Other Information

Applicants can find this and other HHS/CDC funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (click on ''Funding,'' then ''Grants and Cooperative Agreements'') and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov.*

Dated: August 12, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16430 Filed 8–18–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strengthening HIV/AIDS Prevention, Care, and Treatment in the Republic of Haiti as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: AA168.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 12, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under sections 307 and 317(k)(2) of the Public Health Service Act [42 U.S.C 2421 and 247b(k)(2)], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Haiti are to treat at least 25,000 HIV-infected individuals; and care for 125,000 HIV-affected individuals, including orphans.

Haiti's HIV prevalence rate in adults is reported as 5.6 percent, according to the 2004 Annual Report of the Joint United Nations Programme on HIV/AIDS (UNAIDS). Access to prevention and treatment is limited among Haitian population because of an underdeveloped public health infrastructure and a lack of clinical capacity.

Purpose: The purpose of this funding announcement is to build progressively an indigenous, sustainable response to the national HIV epidemic through the rapid expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions, and improved linkages to HIV counseling and testing and HIV treatment by targeting rural and other underserved populations in Haiti.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

This announcement is only for non-research activities supported by HHS, including the Centers for Disease Control and Prevention (CDC). 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.*

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan for AIDS Relief and one (or more) of the following performance goal(s) for the HHS/CDC National Center for HIV, STD and TB Prevention (NCHSTP): Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment, and strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Haiti. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Haiti will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Specific awardee activities for this program are as follows:

1. Provide technical assistance and training to new and/or existing associations of People Living with HIV/AIDS (PLWHA) and other associations of infected/affected persons, in at least five departments.

2. Facilitate training of HIV positive association members.

3. Promote a national network of PLWHA associations.

4. Support and help increase the management capacity of PLWHA and other associations of infected/affected persons.

5. Facilitate associations of PLWHA to conduct HIV prevention and care activities among their infected/affected membership base.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Organize an orientation meeting with the grantee to brief it on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. 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, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $500,000 (This amount is an estimate, and is subject to availability of funds).

Approximate Number of Awards: One or more.

Approximate Average Award: $100,000 (This amount is for the first 12-month budget period, and includes direct costs).

Floor of Award Range: $100,000.

Ceiling of Award Range: $100,000.

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Public and private non-profit and for-profit organizations may submit applications, such as:

- Public, non-profit organizations.
- Private, non-profit organizations.
- For-profit organizations.
- Small, minority-owned, and women-owned businesses.
- Colleges.
- Universities.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.

In addition, applicants must meet the criteria listed below:

- Documented experience providing services in Haiti.
- Have a minimum of three years of experience in HIV/AIDS particularly in the provision of basic social services for HIV-infected/affected persons, must have experience with non-facility-based counseling, and must already be integrated into the national HIV/AIDS program.
- Documented experience working with populations engaged in high-risk behaviors.[1]

III.2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, We will consider your application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- Applicants must provide documentation that substantiates eligibility criteria. Such proof could

[1] Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing abstinence and faithfulness behavior-change interventions.

include, but is not limited to, official documents that describe legal organizational status, annual, financial, and audit reports, etc.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *www.grants.gov*.

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- All pages should be numbered
- Your application MUST be submitted in English

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project Context and Background (Understanding and Need).
- Project Strategy—Description and Methodologies.
- Project Goals.
- Project Outputs.
- Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief.
- Work Plan and Description of Project Components and Activities.
- Performance Measures.
- Timeline (*e.g.*, GANNT Chart).
- Management of Project Funds and Reporting.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Project Budget and Justification.
- Curriculum vitas of current staff who will work on the activity.
- Job descriptions of proposed key positions to be created for the activity.
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms.
- Applicant's Corporate Capability Statement.
- Letters of Support.
- Evidence of Legal Organizational Structure.
- Applicants must provide documentation that substantiates their well-developed management and financial controls and ability to implement HIV activities with reach to rural areas of Haiti. Such proof could include, but is not limited to, annual, financial, and audit reports, etc.

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 12, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *www.grants.gov*. We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov*. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions.

If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required) relating to the management of sub-grants to local organizations and improving their capacity.
- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: HHS/CDC strongly encourages you to submit electronically at: *www.grants.gov.* You will be able to download a copy of the application package from *www.grants.gov*, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov*, or by phone at 1–800–518–4726 (1–800–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any

unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement.

You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff; or

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management—AA168, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Work Plan (20 Points)

Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Haiti to achieve the goals of the Emergency Plan? Is the plan adequate to carry out the proposed objectives? Does the work plan include quantitative, process and outcome measures?

2. Need (10 Points)

To what extent does the applicant justify the need for this program within the target community?

3. Methods (20 Points)

Are the proposed methods feasible? To what extent will they accomplish the numerical goals of the President's Emergency Plan for AIDS Relief?

4. Monitoring Evaluation and Reporting (20 points)

Does the applicant propose a system for reviewing and adjusting program activities based on monitoring information? Does the applicant include indicators for each program milestone and incorporated into the financial and programmatic reports? Are all indicators drawn from the Emergency Plan Indicator Guide? Can the system generate financial and program reports to show disbursement of funds, and progress towards achieving the objectives of the Emergency Plan in Haiti.

5. Personnel (10 Points)

Do the staff members have appropriate experience, including local language skills? Are the staff roles clearly defined? As described, will the staff be sufficient to accomplish the program goals?

6. Program Experience (20 Points)

Is the applicant's program experience relevant to the provision of the interventions it intends to provide?

7. Budget (Reviewed, but Not Scored)

Is the budget itemized, well-justified and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Haiti?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office in Haiti. The panel can include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 15, 2005

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status

Applicants can find additional information on these requirements on the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS 5161–1 application in your Grants.gov

electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once you have filled out the form, please attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports (in English)

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Haiti.

f. Additional Requested Information.

2. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Haiti.

3. Financial status report, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Kathy Grooms, Country Program Officer, CDC, NCHSTP, Global AIDS Program, 1600 Clifton Road, MS E–04, Atlanta, GA 30333, Telephone: 404–639–8394, E-mail: *Kgrooms@cdc.gov*.

For financial, grants management, or budget assistance, contact: Vivian Walker, Contracts Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2724, E-mail: *vew4@cdc.gov*.

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (Click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov*.

Dated: August 12, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16433 Filed 8–18–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strengthening and Expanding Anti-Retroviral (ARV) Treatment Through the Provision of Social Support Services to HIV/AIDS-Infected and Affected Populations in the Central Plateau and Saint Marc Communities of the Republic of Haiti, as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA214.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 12, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C Sections 242l and 247b(k)(2)], as amended and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Purpose: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm*.

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Haiti are to treat at least 25,000 HIV-infected individuals; and care for 125,000 HIV-affected individuals, including orphans.

Haiti's HIV prevalence rate in adults is reported at 5.6 percent, according to the 2004 Annual Report of the Joint United Nations Programme on HIV/AIDS (UNAIDS). Access to prevention and treatment is limited among the Haitian population because of an underdeveloped public health infrastructure and lack of clinical capacity.

Purpose: The purpose of this funding announcement is to build progressively an indigenous, sustainable response to the national HIV epidemic through the rapid expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions, and improved linkages to HIV counseling and testing and HIV treatment by targeting rural and other underserved populations in Haiti.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment,

disease-monitoring and HIV screening for blood safety.

This announcement is only for non-research activities supported by HHS, including the Centers for Disease Control and Prevention (CDC). 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.*

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan for AIDS Relief and one (or more) of the following performance goal(s) for the National Center for HIV, Sexually Transmitted Disease and Tuberculosis Prevention (NCHSTP), within HHS/CDC: Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment services, and strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Haiti. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a 4-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the 5-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this 4-year plan, which the U.S. Government Emergency Plan team on the ground in Haiti will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Specific awardee activities for this program are as follows:

1. Build the capacity of antiretroviral (ARV) treatment and care facilities in Haiti's rural Central Plateau and Saint Marc communities.
2. Train local health care personnel in local languages in administering treatment, care and testing services to populations infected with HIV or at risk of infection with HIV/AIDS in the Central Plateau and Saint Marc communities.
3. Identify potential patient participants for ARV treatment, care and disease maintenance.
4. Expand health care delivery areas and increase the number of eligible recipients of clinical care in underserved communities in the Central Plateau and Saint Marc.
5. Monitor clinical contact with HIV-positive patients.
6. Implement evaluation strategies for program interventions.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.
2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.
3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.
4. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.
5. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.
6. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.
7. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.
8. 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, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.
9. Collaborate with the Haitian Ministry of Health (MSPP) and partners to strengthen confidential voluntary counseling and testing/prevention of mother-to-child transmission (VCT/PMTCT) sites and regional ARV treatment sites.
10. Provide equipment and commodities (excluding ARV drugs) through a transparent and competitive process to all VCT/PMTCT sites and ARV sites.
11. Support the development of an electronic medical record (EMR) database system, and a surveillance database system for HIV/AIDS case notification in conformation with the strategic-information guidance established by the Office of the U.S. Global AIDS Coordinator.
12. Support the installation of hardware necessary for the operation of these database systems, acquired through a transparent and competitive process.
13. Support operational research and technical assistance for operational research.
14. Support the annual technical review of the National AIDS, TB and STI Program in Haiti.
15. Assist in organizing national and regional meetings (support will not include financing).

Please note: Either HHS staff or staff from organizations that have successfully competed for funding

under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

Measurable outcomes of the program will be in alignment with the following performance goals for the Emergency Plan:

A. Prevention

Number of individuals trained to provide HIV prevention interventions, including abstinence, faithfulness, *and, for populations engaged in high-risk behaviors,*[1] correct and consistent condom use.

1. Abstinence (A) and Be Faithful (B)

- Number of community outreach and/or mass media (radio) programs that are A/B focused
- Number of individuals reached through community outreach and/or mass media (radio) programs that are A/B focused.

B. Care and Support

1. Confidential Counseling and Testing

- Number of patients who accept confidential counseling and testing in a health-care setting.
- Number of clients served, direct.
- Number of people trained in confidential counseling and testing, direct, including health-care workers.

2. Orphans and Vulnerable Children (OVC)

Number of service outlets/programs, direct and/or indirect.

- Number of clients (OVC) served, direct and/or indirect.
- Number of persons trained to serve OVC, direct.

3. Palliative Care: Basic Health Care and Support

- Number of service outlets/programs that provide palliative care, direct and/or indirect.
- Number of service outlets/programs that link HIV care with malaria and tuberculosis care and/or referral, direct and/or indirect.
- Number of clients served with palliative care, direct and/or indirect.
- Number of persons trained in providing palliative care, direct.

C. HIV Treatment With ART

- Number of clients enrolled in ART, direct and indirect.
- Number of persons trained in providing ART, direct.

D. Strategic Information

- Number of persons trained in strategic information, direct.

E. Expanded Indigenous Sustainable Response

- Project-specific quantifiable milestones to measure the following:
  a. Indigenous capacity-building.
  b. Progress toward sustainability.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $7,500,000 (This amount is an estimate for the entire five-year project period, and is subject to availability of funds).

Approximate Number of Awards: One.

Approximate Average Award: $1,500,000 (This amount is for the first 12-month budget period, and includes direct costs).

Floor of Award Range: $1,500,000.

Ceiling of Award Range: $1,500,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III. 1. Eligible Applicants

Public and private non-profit and for-profit organizations may submit applications, such as:

- Public, non-profit organizations
- Private, non-profit organizations
- For-profit organizations
- Small, minority-owned, and women-owned businesses
- Colleges
- Universities
- Hospitals
- Community-based organizations
- Faith-based organizations

In addition, applicants must meet the criteria listed below:

1. Be indigenous to Haiti
2. Have a minimum of three years of experience in HIV/AIDS and TB care
3. Have documented experience in providing fully integrated HIV/AIDS and health care to residents of the Central Plateau region of Haiti.
4. Demonstrate the capacity to expand existing fully integrated HIV/AIDS care in the Central Plateau and Saint Marc regions of Haiti.
5. Must already be integrated into the national HIV/AIDS program.

III. 2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, funding preference will go to organizations that can leverage additional funds to contribute to program goals.

III. 3. Other

If you request a funding amount greater than the ceiling of the award range, we will consider your application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV. 3. Submission Dates and Times'' for more information on deadlines.
- Applicants must provide documentation that substantiates eligibility criteria. Such proof could include, but is not limited to, official documents that describe legal organizational status, annual, financial, and audit reports, etc.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV. 1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

[1] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *http://www.grants.gov*.

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV. 2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, we will only review the first pages within the page limit
- Font size: 12 point unreduced
- Double-spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.
- All pages should be numbered
- Your application MUST be submitted in English

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project Context and Background (Understanding and Need)
- Project Strategy—Description and Methodologies
- Project Goals
- Project Outputs
- Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief
- Work Plan and Description of Project Components and Activities
- Performance Measures
- Timeline (*e. g.* , GANNT Chart)
- Management of Project Funds and Reporting.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Project Budget and Justification
- Curriculum vitae of current staff who will work on the activity
- Job descriptions of proposed key positions to be created for the activity
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms
- Applicant's Corporate Capability Statement
- Letters of Support
- Evidence of Legal Organizational Structure
- Applicants must provide documentation that substantiates their well-developed management and financial controls and ability to implement HIV activities with reach to rural areas of Haiti. Such proof could include, but is not limited to, annual, financial, and audit reports, etc.

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 12, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date.

You may submit your application electronically at *http://www.grants.gov.* We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov.* We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions.

If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel,

training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.

• All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

• The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.

• The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required) relating to the management of sub-grants to local organizations and improving their capacity.

• You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.

A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: HHS/CDC strongly encourages you to submit electronically at: *http://www.grants.gov.* You will be able to download a copy of the application package from *http://www.grants.gov,* complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov,* or by phone at 1–800–518–4726 (1–800–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement.

You must clearly mark the paper submission: ''BACK–UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will

consider the electronic version the official submission.

We strongly recommend that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff, or

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management—AA214, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Work Plan (20 Points)

Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Haiti to achieve the goals of the Emergency Plan? Is the plan adequate to carry out the proposed objectives? Does the work plan include quantitative, process and outcome measures?

2. Need (10 Points)

To what extent does the applicant justify the need for this program within the target community?

3. Program Experience (20 points)

Is the applicant's program experience relevant to the provision of the interventions it intends to provide?

4. Methods (20 Points)

Are the proposed methods feasible? To what extent will they accomplish the numerical goals of the President's Emergency Plan?

5. Monitoring Evaluation and Reporting (20 Points)

Does the applicant describe a system for reviewing and adjusting program activities based on monitoring information? Does the plan include indicators for each program milestone and incorporated into the financial and programmatic reports? Are all indicators drawn from the Emergency Plan Indicator Guide? Is the system able to generate financial and program reports to show disbursement of funds, and progress towards achieving the objectives of the President's Emergency Plan?

6. Personnel (10 Points)

Do the staff members have appropriate experience, including local-language skills? Are the staff roles clearly defined? As described, will the staff be sufficient to accomplish the program goals?

7. Budget (Not Scored)

Is the budget itemized, well-justified and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Haiti?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office in Haiti. The panel can include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision: It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, funding preference will go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS 5161–1 application in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1-Certificates.pdf.* Once you have filled out the form, please attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports (in English).

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Haiti.

f. Additional Requested Information.

2. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Haiti.

3. Financial status report, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Kathy Grooms, Country Program Officer, CDC, NCHSTP, Global AIDS Program, 1600 Clifton Road, MS E–04, Atlanta, GA 30333, Telephone: 404–639–8394, Email: *Kgrooms@cdc.gov.*

For financial, grants management, or budget assistance, contact: Vivian Walker, Contracts Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2724, E-mail: *vew4@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov.*

Dated: August 12, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16434 Filed 8–18–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strengthen and Expand Delivery of HIV/AIDS Treatment, Care and Support Services Targeting the Haitian National Police (PNH) and Prevention of Mother-to-Child Transmission (PMTCT) Points of Service in the Republic of Haiti as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA215.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates:

Application Deadline: September 12, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. sections 241 and 2421] as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 2 in the Caribbean. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Haiti are to treat at least 25,000 HIV-infected individuals; care for 125,000 HIV-affected individuals, including orphans.

Purpose: An essential element of preventing new cases of HIV in Haiti is to ensure as much of the population as possible groups has adequate access to screening, treatment, and care facilities. Haiti's HIV prevalence rate in adults is reported to be 5.6 percent, according to the *2004 Annual Report* of the Joint United Nations Programme on HIV/AIDS (UNAIDS). Access to prevention and treatment is limited among the Haitian population because of an underdeveloped public health infrastructure and a lack of clinical capacity.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

Measurable outcomes of the program will be in alignment with the numerical goal of the President's Emergency Plan for AIDS Relief and with one (or more) of the following performance goal(s) for the National Center for HIV, STD and TB Prevention (NCHSTP) of the Centers for Disease Control and Prevention within HHS: Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment services; strengthen the capacity nationwide to monitor the epidemic; develop and implement effective HIV prevention interventions; and evaluate prevention programs.

This announcement is only for non-research activities supported by HHS, including the Centers for Disease

Control and Prevention (CDC). 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.*

Activities

The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Haiti. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Haiti will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program are as follows:

1. Provide ongoing field support to PMTCT sites located in underserved areas of greater Port-au-Prince, including Petionville, Carrefour and Port-au-Prince, and to capacitate them to:

a. Provide routine, confidential voluntary counseling and testing (VCT) to pregnant women.

b. Provide partner-referral counseling and testing.

c. Use a modified Directly Observed Treatment—Short Course (DOTS) approach to put HIV-positive pregnant women and their babies under prophylactic anti-retroviral (ARV) treatment.

d. Enroll babies born to HIV-infected mothers in PMTCT care to ensure they are tested according to schedule, and that they are fed properly.

e. Establish mechanisms at VCT and PMTCT sites to provide psychosocial support to people living with HIV/AIDS (PLWHA).

f. Develop network links with sites that provide ARV services, such as: Groupe Haitien d'Étude du Sarcome de Kaposi et des Infections Opportunistes (GHESKIO), also known as The Haitian Study Group on Kaposi's Sarcoma and Opportunistic Infections; Grace Children's Hospital; l'Hopital de l'Université d'Etat d'Haiti (HUEH); and/or Fame Period.

2. Coordinate health education and promotion activities for the Haitian National Police—Police Nationale d'Haiti (PNH) in the area of HIV/AIDS prevention. This will include the following activities:

a. The introduction of educational modules on abstinence, being faithful, and, when appropriate for individuals engaged in high-risk behavior,[1] correct and consistent condom use (ABC) and related, culturally appropriate Behavior Change Communication (BCC) messages into the PNH training curricula.

b. The training of trainers in culturally appropriate HIV/AIDS prevention techniques and messages that reflect and respect local cultural and religious morés.

c. The training of peer educators in culturally appropriate HIV/AIDS prevention techniques and messages that reflect and respect local cultural and religious morés.

d. Support for the development of cascade training in the PNH.

3. Support for the expansion of confidential VCT within the PNH health care system. This will include the following:

a. The management of opportunistic infections (OI).

b. Palliative care and support for PLWHA.

c. Making HIV testing a routine part of medical care.

4. Develop and support a referral system establish PNH confidential VCT and anti-retroviral treatment (ART) and care centers.

5. Develop and support a monthly local-language newsletter in collaboration with the Haitian Ministère de la Santè Publique et de la Population—Ministry of Health (MSPP). These newsletters will track the progress of all VCT, PMTCT and ART sites that report service statistics to the MSPP's National AIDS Control Program. They will also serve to provide external feedback to national partner institutions and the Haitian public and internal feedback to the reporting sites.

Information on HIV prevention methods (or strategies) must include abstinence, monogamy (*i.e.*, being faithful to a single sexual partner) or, for populations engaged in high-risk behaviors,[2] using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use). Awardees may not implement condom social marketing without also implementing abstinence and faithfulness behavior-change interventions.

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined in this announcement.

Administration

Awardee must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement (See HHS Activities and Reporting sections below for details), and Comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

[1] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

[2] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Organize an orientation meeting with the grantee to brief it on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. 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, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

9. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

10. Provide test kits for confidential VCT at PMTCT sites and PNH sites.

11. Provide technical assistance for training, OI case management and integration of tuberculosis (TB) and HIV care.

12. Provide technical assistance for surveillance, monitoring and evaluating (M&E) HIV/AIDS trends in these populations.

13. Provide laboratory training and technical assistance in lab organization and patient flow.

14. Provide oversight for QA/QC of the laboratory.

15. Provide informatics support for satellite connection to enable the PNH to meet reporting requirements.

16. Provide technical assistance to the medical staff in developing a palliative care program.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

Measurable outcomes of the program will be in alignment with the following performance goals for the Emergency Plan:

A. Prevention

Number of individuals trained to provide HIV prevention interventions, including abstinence, faithfulness, and, for populations engaged in high-risk behaviors [3], correct and consistent condom use.

1. Abstinence (A) and Be Faithful (B).

- Number of community outreach and/or mass media (radio) programs that are A/B focused.
- Number of individuals reached through community outreach and/or mass media (radio) programs that are A/B focused.

B. Care and Support

1. Confidential counseling and testing.

- Number of patients who accept confidential counseling and testing in a health-care setting.
- Number of clients served, direct.
- Number of people trained in confidential counseling and testing, direct, including health-care workers.

2. Orphans and Vulnerable Children (OVC).

- Number of service outlets/programs, direct and/or indirect.
- Number of clients (OVC) served, direct and/or indirect.
- Number of persons trained to serve OVC, direct.

3. Palliative Care: Basic Health Care and Support

- Number of service outlets/programs that provide palliative care, direct and/or indirect.
- Number of service outlets/programs that link HIV care with malaria and tuberculosis care and/or referral, direct and/or indirect.
- Number of clients served with palliative care, direct and/or indirect.
- Number of persons trained in providing palliative care, direct.

C. HIV Treatment With ART

- Number of clients enrolled in ART, direct and indirect.
- Number of persons trained in providing ART, direct.

D. Strategic Information

- Number of persons trained in strategic information, direct.

E. Expanded Indigenous Sustainable Response

- Project-specific quantifiable milestones to measure the following:

a. Indigenous capacity-building.

b. Progress toward sustainability.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $1,220,000 (This amount is an estimate for the five-year project period, and is subject to availability of funds).

Approximate Number of Awards: One.

Approximate Average Award: $244,000. (This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: $244,000.

Ceiling of Award Range: $325,000. (This ceiling is for the first 12 month budget period.)

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS' commitment to continuation of awards

[3] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Public and private non-profit and for-profit organizations may submit applications, such as:

- Public, non-profit organizations.
- Private, non-profit organizations.
- Universities.
- Colleges.
- For-profit organizations.
- Small, minority, women-owned businesses.
- Community-based organizations.
- Research institutions.
- Hospitals.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States).

In addition, applicants must meet the criteria listed below:

- Have at least three years of documented HIV/AIDS related program implementation experience in Haiti, particularly in the provision of comprehensive PMTCT in the deprived areas of the Haitian capital, Port-au-Prince.
- Have demonstrated expertise in the areas of direct delivery of HIV confidential CT delivery and culturally appropriate AIDS prevention communications in Haiti.
- Be locally incorporated in Haiti.
- Have established relationships with the Government of Haiti and written letters of support from the Haitian National MSPP.

III.2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, we will consider your application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *http://www.grants.gov.*

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- All pages should be numbered.
- Your application MUST be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project Context and Background (Understanding and Need).
- Project Strategy—Description and Methodologies.
- Project Goals.
- Project Outputs.
- Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief.
- Work Plan and Description of Project Components and Activities.
- Performance Measures.
- Timeline (*e.g.*, GANNT Chart).
- Management of Project Funds and Reporting.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Project Budget and Justification.
- *Curriculum vitae* of current staff who will work on the activity.
- Job descriptions of proposed key positions to be created for the activity.
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms.
- Applicant's Corporate Capability Statement.
- Letters of Support.
- Evidence of Legal Organizational Structure.
- Applicants must provide documentation that substantiates their well-developed management and financial controls and ability to implement HIV activities with reach to rural areas of Haiti. Such proof could include, but is not limited to, annual, financial, and audit reports, etc.

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which

uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*.

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 12, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *http://www.grants.gov*. We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov*. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United states or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required) relating to the management of sub-grants to local organizations and improving their capacity.
- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.

A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global

Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (e.g., ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

Application Submission Address: HHS/CDC strongly encourages you to submit electronically at: *http://www.grants.gov*. You will be able to download a copy of the application package from *http://www.grants.gov*, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov*, or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission : ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (e.g., Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff; or

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management—AA215, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Work Plan (20 Points)

Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Haiti to achieve the goals of the Emergency Plan? Is the plan adequate to carry out the proposed objectives? Does the work plan include quantitative, process and outcome measures?

2. Need (10 Points)

To what extent does the applicant justify the need for this program within the target community?

3. Program Experience (20 Points)

Is the applicant's program experience relevant to the provision of the services it intends to provide? Does applicant demonstrate knowledge of the cultural and political realities in Haiti?

4. Methods (20 Points)

Are the proposed methods feasible? To what extent will they accomplish the Numerical goals of the President's Emergency Plan?

5. Monitoring Evaluation and Reporting (20 Points)

Does the applicant describe a system for reviewing and adjusting program activities based on monitoring information? Does the plan include indicators developed for each program milestone and incorporated into the quarterly financial and programmatic reports? Are the indicators drawn from the Emergency Plan Indicator Guide? Will the system generate financial and program reports to show the disbursement of funds, and progress towards achieving the objectives of the President's Emergency Plan?

6. Personnel (10 Points)

Do the staff members have appropriate experience, including local language skills? Are the staff roles clearly defined? As described, will the staff be sufficient to accomplish the program goals?

7. Budget (Not Scored)

Is the budget itemized, well-justified and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Haiti?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92. For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–5 HIV Program Review Panel Requirements.
- AR–7 Executive Order 12372.
- AR–8 Public Health System Reporting Requirements.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS 5161–1 application in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1-Certificates.pdf.* Once you have filled out the form, please attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports (in English):

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Haiti.

f. Additional Requested Information.

2. Annual progress report, due no later than 90 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Haiti.

3. Financial status report, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, due no later than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Kathy Grooms, Country Program Officer, CDC, NCHSTP, Global AIDS Program, 1600 Clifton Road, MS E–04, Atlanta, GA 30333, Telephone: 404–639–8394, E-mail: *Kgrooms@cdc.grooms.*

For financial, grants management, or budget assistance, contact: Vivian Walker, Contracts Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2724, E-mail: *vew4@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (Click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov.*

Dated: August 12, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16444 Filed 8–18–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Increasing Access to, and Uptake of, HIV Prevention and Care, Including Confidential Voluntary Counseling and Testing (CT) Among the Uniformed Services, Ex-combatants and Their Partners in the Republic of Côte d'Ivoire, as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA240.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates:

Application Deadline: September 12, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. Sections 241 and 2421], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Côte d'Ivoire are to treat at least 77,000 HIV-infected individuals and care for 385,000 HIV-affected individuals, including orphans.

Purpose: The United States Government seeks to reduce the impact of HIV/AIDS in specific countries in sub-Saharan Africa, Asia and the Americas by working with governments and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

The purpose of the program is to increase the uptake of high-quality HIV prevention and confidential HIV testing among the uniformed services, ex-combatants and their partners in Côte d'Ivoire. Increased access to, and uptake of, combined prevention, sexually transmitted infections (STI) diagnosis and treatment, and counseling and confidential HIV testing (CT) interventions in these populations is intended to lead to safer sexual behaviors, including abstinence, fidelity, and, for populations engaged in high-risk behaviors,[1] correct and consistent condom use; and increased use of HIV care, treatment and support through a strong referral network to complementary services. A secondary purpose of this program is to enhance related HIV/AIDS communications activities to promote the uptake of CT and other care as well as behavior change.

Specifically, the winner of this announcement will expand quality HIV prevention and confidential HIV CT and STI care by targeting the uniformed services, ex-combatants and their partners in Côte d'Ivoire. These interventions include referral of those testing HIV-positive to sources of ongoing psycho-social support, comprehensive ART and palliative care.

Monitoring and evaluation of all programs and interventions will be essential in measuring success of these activities. All of the program activities conducted in this cooperative agreement are part of The President's Emergency Plan.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan and with the following performance goal for the Centers for Disease Prevention and Control (CDC) National Center for HIV, Sexually Transmitted Disease and Tuberculosis Prevention within HHS: By 2010, work with other countries, international organizations, the U.S. Department of State, the U.S. Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among young people 15 to 24 years of age. Specific measurable outcomes of this program include, but are not limited to, the number, age, sex and test outcomes of clients (individual and couples) provided with confidential HIV CT and STI care, the cost per client, and the number of persons with HIV successfully referred to an effective care or treatment provider.

This announcement is only for non-research activities supported by HHS, including the CDC. 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.*

Activities: Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined in this Program Announcement. For each of these activities, the grantee will give priority to evidence-based, yet culturally adapted, innovative approaches.

The awardee will either implement activities directly or through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Côte d'Ivoire will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program target the specific subpopulations of uniformed services, ex-combatants and their partners.

Specific awardee activities are as follows:

1. Reinforcing the network of existing static sites and establishing mobile units to provide outreach HIV/STI prevention education and HIV CT and STI diagnosis and treatment (not including HIV ARV treatment) with referral to care and treatment sites for HIV-positive

[1] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

individuals and couples. This will include the use of standardized CT, STI management and other protocols and procedures; standardized management systems; standardized monitoring and evaluation procedures and instruments; and standardized education and behavior change materials and activities.

2. Developing and implementing targeted social marketing behavior change campaigns to promote abstinence, faithfulness, and, for populations engaged in high-risk behaviors,[2] consistent and correct condom use; and uptake of confidential CT for individuals and couples, and reduction of HIV-associated stigma. Awardees may not implement social marketing of condoms without also implementing abstinence and faithfulness behavior change interventions.

3. Developing and implementing programs to promote risk-avoidance behavior change at high-risk sites (e.g., bars, demobilization cantons, active-duty deployment away from base etc).

4. Promoting messages that raise awareness about the harmful ties between alcohol/substance abuse and HIV infection, as well as between alcohol/substance abuse and poor adherence to antiretrovirals (ARVs).

5. Creating referral networks for HIV-positive clients to improve access to peer-support groups and other care, treatment and support.

6. Collecting strategic information to ensure the effectiveness of HIV/AIDS prevention activities, consistent with strategic-information guidance established by the Office of the Global AIDS Coordinator.

7. Collaborating with, and providing support to, the National Security and Defense Forces, Ministry of Health (MOH) and other Côte d'Ivoire Government agencies, as appropriate, which can include, without limitation: improvement of monitoring and evaluation activities to assure high-quality in all peer education and CT/STI service delivery sites; development and implementation of training and communications materials; and improvement of infrastructure directly associated with HIV and STI testing and counseling.

8. Ensuring that all of the above activities are undertaken in a manner consistent with and in support of U.S. Government HIV/AIDS strategies. Work to link activities described here with related HIV prevention, care, treatment and basic social services in the area, and promote coordination at all levels, including through bodies such as village, district, regional and national HIV coordination committees and networks of community-based, non-governmental and faith-based organizations.

9. Participate in relevant national technical coordination committees and in national process(es) to ensure local stakeholders receive adequate information and assistance to engage and access effectively funding opportunities supported by the President's Emergency Plan and other donors.

10. Develop and implement a project-specific participatory monitoring and evaluation plan by drawing on national and U.S. Government requirements and tools, including the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

Administration

The winning applicant must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement (See HHS Activities and Reporting sections below for details), and must comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring. HHS Activities for this program are as follows:

1. Provide technical assistance in the development of training, communication and monitoring and evaluation materials and tools in local languages in support of project activities. Interventions will emphasize abstinence for youth and other unmarried persons, mutual faithfulness and partner reduction for sexually active adults, and correct and consistent use of condoms as well as uptake of HIV testing and STI screening by those engaged in high-risk behaviors.[3]

2. Provide technical assistance to establish quality HIV testing, including quality assurance, and competitive and transparent procurement of HIV rapid tests and other laboratory supplies.

3. Facilitate the national, regional and international exchange of materials and expertise with regard to comprehensive prevention, STI treatment and counseling and confidential HIV testing services for uniformed services, ex-combatants and their partners in Côte d'Ivoire.

4. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

5. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

6. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

7. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

8. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance.

Measurable outcomes of the program will be in alignment with the following

[2] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

[3] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

performance goals for the Emergency Plan:

A. Prevention

Number of individuals trained to provide HIV prevention interventions, including abstinence, faithfulness, and, for populations engaged in high-risk behaviors [4], correct and consistent condom use.

1. Prevention (ABC).

• Number of individuals reached with community outreach HIV/AIDS prevention programs that promote abstinence and/or being faithful.

B. Care and Support

1. Confidential counseling and testing.

• Number of clients who accept confidential counseling and testing in a health-care setting.

• Number of clients served, direct.

• Number of people trained in confidential counseling and testing, direct, including health-care workers.

2. Palliative Care: Basic Health Care and Support.

• Number of service outlets that provide STI screening and treatment, direct.

• Number of clients served with STI screening and treatment, direct.

• Number of persons trained in providing STI screening and treatment, direct.

• Number of service outlets that provide palliative care, direct and/or indirect.

• Number of clients served with palliative care, direct and/or indirect.

• Number of persons trained in providing palliative care, direct.

C. Strategic Information

• Number of persons trained in strategic information, direct.

D. Expanded Indigenous Sustainable Response

• Project-specific quantifiable milestones to measure the following:

a. Indigenous capacity-building.

b. Progress toward sustainability.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: FY 2005.

Approximate Total Funding: $1–1.8 million per year, over four years; or approximately $5.5 million. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $1.8 million. (This amount is for the first 12 month budget period and includes both direct and indirect costs.)

Floor of Award Range: $1 million.

Ceiling of Award Range: $1.8 million.

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports and input from the Government of Côte d'Ivoire), and the determination that continued funding is in the best interest of the United States Federal Government, through the President's Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by:

• Public, non-profit organizations.

• Private, non-profit organizations.

• Universities.

• Colleges.

• For-profit organizations.

• Small, minority, women-owned businesses.

• Community-based organizations.

• Research institutions.

• Hospitals.

• Faith-based organizations.

• Federally recognized Indian tribal governments.

• Indian tribes.

• Indian tribal organizations.

• State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

• Political subdivisions of States (in consultation with States).

Additionally, applicants must meet the criteria listed below:

• Have at least three years of documented experience in implementing HIV/AIDS-related programs in Côte d'Ivoire.

• Have demonstrated expertise working with the target populations and in the areas of direct HIV confidential CT service delivery, and HIV/AIDS communications in local languages in Côte d'Ivoire.

• Have established relationships with the National Government in Côte d'Ivoire and written letters of support from the health authorities responsible for the Ivorian National Forces of Defense and Security.

III.2. Cost-Sharing or Matching

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, we will consider your application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. You will be notified that your application did not meet submission requirements.

• HHS/CDC will consider late applications to be non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *http://www.grants.gov*.

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff

[4] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

at: 770–488–2700. We can e-mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25—If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Pages should be numbered.
- Printed only on one side of page.
- Appendices may be included.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project Context and Background (Understanding and Need).
- Project Strategy—Description and Methodologies.
- Project Goals.
- Project Outputs.
- Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief.
- Work Plan and Description of Project Components and Activities.
- Performance Measures.
- Timeline (*e.g.*, GANNT Chart).
- Management of Project Funds and Reporting.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Project Budget and Justification.
- Project Budget Notes.
- Job Descriptions.
- STI and HIV Testing Protocols.
- Overview of peer outreach, STI and HIV Counseling and Testing Quality Assurance Procedures, both Internal and External.
- Peer outreach, HIV Counseling and Testing Quality Assurance, Monitoring and Evaluation and Strategic Information Forms.
- HIV Counseling and Testing Referral Procedures and Forms.
- Mobile HIV Counseling and Testing Processes and Procedures.
- HIV Counseling and Testing Staff Training Curricula.
- Applicant's Corporate Capability Statement.
- Letter(s) of Support.

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 12, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *http://www.grants.gov*. We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov*. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to *Grants.gov* on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must taken into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect

Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the U.S. or to international organizations regardless of their location.

• The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

• You must obtain an annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standards(s) approved in writing by CDC.

• A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

• Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You can find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: HHS/CDC strongly encourages you to submit electronically at: *http://www.grants.gov.* You will be able to download a copy of the application package from *http://www.grants.gov*, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov*, or by phone at 1–800–518–4726 (1–800–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission : ''BACK–UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov Web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff; or

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management—AA240, CDC Procurement and Grants Office, U.S. Department of Health and Human

Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and they will be an element of evaluation.

We will evaluate your application will be evaluated against the following criteria:

1. Ability to Carry Out the Proposal (30 points).

Does the applicant demonstrate the local experience and capability to achieve the goals of the project? Do the staff members have appropriate experience? Are the staff roles clearly defined? Does the applicant currently have the capacity to reach target populations of uniformed services, ex-combatants and their partners in Côte d'Ivoire despite the complex politico-military situation?

2. Understanding the issues, principles and systems requirements involved in carrying out the project and fitting into the five-year strategy and goals of the President's Emergency Plan (30 points).

Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach the target populations in Côte d'Ivoire and meet the goals of the Emergency Plan?

3. Work Plan (20 points).

Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Côte d'Ivoire to achieve the goals of the Emergency Plan?

4. Administrative and Accounting Plan (20 points).

Is there a plan to prepare reports, monitor and evaluate activities, audit expenditures and manage the resources of the program?

5. Budget (not scored).

Is the budget itemized, well-justified and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Côte d'Ivoire?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office in Côte d'Ivoire. The panel can include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–5 HIV Program Review Panel Requirements.
- AR–7 Executive Order 12372.
- AR–8 Public Health System Reporting Requirements.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS 5161–1 application in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once you have filled out the form, please attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports (in English and French).

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Côte d'Ivoire.

f. Additional Requested Information.

2. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Côte d'Ivoire.

3. Financial status report, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

Please note: the grantee is responsible for accurate translation of all reports, and should submit French-language versions to the local HHS/CDC office in Abidjan and English-language versions to the HHS/CDC Grants office in the United States, by the established deadlines. See the HHS/CDC project management officer in Abidjan for more details.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Monica Nolan, Director, HHS/CDC/Projet RETRO–CI, 2010 Abidjan Place, Dulles, Virginia 20189–2010, Telephone: (225) 21–25–41–89, E-mail: *mnolan@cdc.gov.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–1515, E-mail: *zbx6@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (Click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov.*

Dated: August 12, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16445 Filed 8–18–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Expansion of HIV/AIDS Care Training Activities in the Republic of Kenya Under the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: AA174.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 12, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. 241 and 242l], as amended and Section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 2151b, and under Public Law 108–25 (United States Leadership against HIV/AIDS, Tuberculosis and Malaria Act of 2004) [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Kenya are to treat at least 250,000 HIV-infected individuals and care for 1,250,000 HIV-affected individuals, including orphans.

Purpose: The purpose of the program is to support implementation of HIV treatment training programs in Kenya as part of President Bush's Emergency Plan for AIDS Relief. Access to anti-retroviral treatment for HIV in Kenya is expanding rapidly, and the needs for human capacity development are very substantial. The National AIDS and STD Control Program of the Kenyan Ministry of Health (MOH) has developed training curricula; there is a need for partners to conduct these trainings and develop and provide programs for follow up.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Plan for AIDS Relief and one (or more) of the following performance goal(s) for the National Center for HIV, STD, and TB Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) within HHS: Initiate, expand or strengthen HIV/AIDS prevention, care, treatment and support activities globally. They will also continue to contribute to the goals of the President's Emergency Plan for AIDS Relief (The Emergency Plan) to prevent seven million new infections, provide ten million people with care and support (including those orphaned/vulnerable by HIV/AIDS) and place two million people on anti-retroviral treatment.

This announcement is only for non-research activities supported by HHS/CDC. If applicants propose research, HHS/CDC 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.*

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Kenya. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The awardee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Kenya will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The awardee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS

Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program are as follows:

1.Adapt training materials related to a continuum of HIV treatment from facility-based care (including the provision of anti-retroviral therapy {ART}) to care at the community level (home-based care), in collaboration with Kenyan and U.S. Government agencies and non-governmental organizations in Kenya.

2. Conduct classroom and practical training related to HIV treatment.

3. Provide follow-up trainings, continuing medical education, and supportive supervisory visits for trainees to ensure optimal quality of program implementation following classroom training.

4. Participate in the provision of HIV care at supported sites to maintain familiarity with clinical practice and the challenges faced by those who provide HIV care in these settings, and to assist with current staffing shortages at the supported clinics.

5. Assist with integration of HIV care with other interventions, such as home-based care, tuberculosis (TB) treatment, malaria treatment, and other HIV-related care through training and supportive supervision.

6. Develop plans for sustainable training programs (*i.e.*, through linkages with local training facilities).

7. Provide regular and timely reports of activities to both the Kenya USG interagency team and to appropriate Ministry of Health Officials on indicators as required by the Emergency Plan and the Kenya National AIDS Strategic Plan.

Administration: Winning applicants must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (See HHS Activities and Reporting sections below for details.) Winning applicants must comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS/CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Organize an orientation meeting with the awardee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the awardee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator. Participate in the training of health staff for the program activities.

3. Review and approve awardee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve awardee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with awardee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with awardee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with awardee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. Participate in technical review meetings during the implementation of the program.

9. Review training materials and plans to ensure quality of these materials.

10. Assist in the identification of trainees; support implementation of programs by the trainees; and participate in the evaluation of programs implemented by the trainees.

11. Play an active role in development of curricula and training courses, including provision of technical assistance.

12. Work with other stakeholders, including faith- and community-based organizations, to continuously evaluate curriculum and training needs, and adapt training as necessary to meet the program needs in Kenya.

13. Working with the awardee, HHS will develop a monitoring evaluation system to monitor the impact of the programs, consistent with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

Measurable outcomes of the program will be in alignment with the following performance goals for the Emergency Plan:

A. Prevention

Number of individuals trained to provide HIV prevention interventions, including abstinence, faithfulness*, and, for populations engaged in high-risk behaviors*,[1] correct and consistent condom use.

1. Abstinence (A) and Be Faithful (B)

- Number of community outreach and/or mass media (radio) programs that are A/B focused.
- Number of individuals reached through community outreach and/or mass media (radio) programs that are A/B focused.

B. Care and Support

1. Confidential counseling and testing.

- Number of patients who accept confidential counseling and testing in a health-care setting.
- Number of clients served, direct.
- Number of people trained in confidential counseling and testing, direct, including health-care workers.

2. Orphans and Vulnerable Children (OVC)

Number of service outlets/programs, direct and/or indirect.

- Number of clients (OVC) served, direct and/or indirect.
- Number of persons trained to serve OVC, direct.

3. Palliative Care: Basic Health Care and Support

- Number of service outlets/programs that provide palliative care, direct and/or indirect.

[1] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

• Number of service outlets/programs that link HIV care with malaria and tuberculosis care and/or referral, direct and/or indirect.
• Number of clients served with palliative care, direct and/or indirect.
• Number of persons trained in providing palliative care, direct.

C. HIV Treatment With ART

• Number of clients enrolled in ART, direct and indirect.
• Number of persons trained in providing ART, direct.

D. Strategic Information

• Number of persons trained in strategic information, direct.

E. Expanded Indigenous Sustainable Response

• Project-specific quantifiable milestones to measure:
a. Indigenous capacity-building.
b. Progress toward sustainability.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $2,000,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One or Two.

Approximate Average Award: $250,000 (This amount is for the first 12-month budget period, and includes direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $400,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, as determined by the annual review and approval of Country Operational Plans, managed by the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Public and private non-profit organizations and by the Kenyan national government, local governments in Kenya, and their agencies may submit applications, such as:

• Public, non-profit organizations
• Private, non-profit organizations
• Small, minority and women-owned businesses
• Universities
• Colleges
• Research institutions
• Hospitals
• Community-based organizations
• Faith-based organizations

Applicants must meet the following criteria:

1. Have at least three years of documented experience in implementing HIV training programs in Kenya with a focus on developing follow-up support to ensure optimal program implementation following training.

2. Have an existing program in Kenya and/or existing partnerships with national and local MOH staff and training institutions in Kenya such that the applicant can begin training activities with little start-up time.

3. Have demonstrated skills related to working through, and building the local capacity of MOH staff at the national, provincial, district and facility levels to plan and implement training programs.

4. Have experience in developing training programs across a continuum of care in HIV, from health facility to community.

5. Have experience in promoting the multi-disciplinary approach to HIV care outlined in the policy of the National AIDS and STD Control Program in Kenya and the 5-year strategy of the President's Emergency Plan for AIDS Relief.

Competition for this cooperative agreement is limited to the types of organizations listed above because of the uniqueness of the specific activities for this project and the location of where the majority of the work will be performed. The types of organizations listed above are those that have direct experience with performing this type of activity.

The organizations listed below are those that are excluded from competition:

• Federally recognized Indian tribal governments
• Indian tribes
• Indian tribal organizations
• State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
• Political subdivisions of States (in consultation with States)

The organizations listed directly above are excluded from competition because inherently they neither have a mandate to, nor have the resources, skills or experience to, provide the types of services requested as part of this cooperative agreement.

III.2. Cost Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, HHS will consider your application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. We will notify you that your application did not meet submission requirements.

• HHS/CDC will consider late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *www.grants.gov.*

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25 if your narrative exceeds the page limit, we will only review, the first pages within the page limit.
- Font size: 12 point unreduced
- Double-spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.
- Your application MUST be submitted in English

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Plan—What is the plan for this project?
- Methods—What methods will be used to conduct activities?
- Objectives—What objectives will be achieved by undertaking this project?
- Timeline—When will activities be undertaken and objectives reached?
- Staff—What staff will be employed to implement the activities?
- Understanding—What is the understanding of this project and the impact it will have on HIV/AIDS treatment in Kenya?
- Need—What is the need for this project in Kenya?
- Performance Measures—What evaluation procedures will be used to determine if the objectives of the project are being met?
- Budget and justification of planned expenditures. Budget is only requested for the first year of program activities. The budget justification will not be counted in the page limit stated above.

You may include additional information in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes
- Organizational Charts
- Job descriptions of proposed key positions to be created for the activity
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms
- Applicant's Corporate Capability Statement
- Letters of Support
- Evidence of Legal Organizational Structure

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 12, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *www.grants.gov.* We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov.* We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the applications electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as having been received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Funds may not be used for reimbursement of pre-award costs.
- Funds may not be used for any new construction.
- Antiretroviral drugs—the purchase of ARVs, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from HHS/CDC officials.
- Needle exchange—No funds appropriated under this solicitation shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following

exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

• The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

• An annual audit of these funds is required by a U.S. based audit firm with international branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC. The audit should specify the use of funds and the appropriateness and reasonableness of expenditures.

• A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities: The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the sub-agreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: HHS/CDC strongly encourages you to submit electronically at: *www.grants.gov.* You will be able to download a copy of the application package from *www.grants.gov*, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: ''BACK–UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find direction for creating PDF files on the Grants.gov web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff; or

Submit the original and two hard copies of your application by mail or express delivery service to the following address:

Technical Information Management Section—AA174, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Plan (30 Points)

Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to meet the goals of the Emergency Plan in Kenya? Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Kenya to achieve the goals of the Emergency Plan? Does the plan include quantitative process and outcome measures?

2. Methods (30 Points)

Does the application include an overall design strategy, including measurable time lines, clear monitoring and evaluation procedures, and specific activities for meeting the proposed objectives? Does the applicant describe a plan to progressively build the capacity of local organizations and of target beneficiaries and communities to respond to the epidemic?

3. Personnel (20 Points)

Do the staff members have appropriate experience? Are the staff roles clearly defined? As described, will the staff be sufficient to accomplish the program goals?

4. Need (20 Points)

To what extent does the applicant justify the need for this program within the target community?

5. Budget and Justification (Reviewed, But Not Scored)

Is the itemized budget for conducting the project, along with the justification, reasonable and consistent with stated objectives and planned program activities?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

In addition, the following factors may affect the funding decision:

- No award will be made without the concurrence of the U.S. Embassy and the HHS/CDC representative for Sudan.
- HHS/CDC will provide justification for any decision to fund out of rank order if there are other factors beyond the concurrence of the U.S Embassy.

V.3. Anticipated Announcement and Award Dates

September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–6 Patient Care
- AR–8 Public Health System Reporting Requirements
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–25 Release and Sharing Data

Applicants can find additional information on these requirements on the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for Kenya.

f. Additional Requested Information.

2. Annual progress report, due 90 days after the end of the budget period.

3. Financial status report, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and

Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Elizabeth Marum, Project Officer, HHS/CDC, Mbagathi Way, Off Mbagathi Road, Nairobi, Kenya, Telephone: 254 20 271 3008, E-mail: *Emarum@cdcnairobi.mimcom.net.*

For financial, grants management, or budget assistance, contact: Diane Flournoy, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2072, E-mail: *Dflournoy@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS/CDC funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (Click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov.*

Dated: August 12, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16448 Filed 8–18–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Application (RFA) AA212]

Building and Strengthening the Development of the Republic of Haiti's Central HIV/AIDS Quality-Assurance/Quality-Control (QA/QC) Laboratory and the Associated National Network of QA/QC Laboratories in Haiti, as Part of the President's Emergency Plan for AIDS Relief; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to fund the President's Emergency Plan for AIDS Relief (The Emergency Plan). The plan has called for immediate action to turn the tide of HIV/AIDS in Africa and the Caribbean. The initiative hopes to prevent at least seven million new HIV infections, place two million people on treatment, and provide care for ten million people, including orphans and vulnerable children. An essential element of preventing new cases of HIV infection is to ensure that high-risk groups have adequate access to screening, treatment, and care facilities.

Haiti's HIV prevalence rate in adults is estimated to be between 3.1 and 5.6 percent according to the Haitian Ministry of Health-Ministère de la Santé Publique et de la Population (MSPP) and the 2004 Annual Report from the Joint United Nations Programme on HIV and AIDS (UNAIDS), respectively. Access to prevention and treatment is limited to the Haitian population due to the underdeveloped public health infrastructure and lack of clinical capacity. In order to improve this capacity, this Cooperative Agreement has been developed to provide much needed funding and resources.

The Catalog of Federal Domestic Assistance number for this program is 93.067.

B. Eligible Applicant

This is a single eligibility request for application (RFA) from MSPP. No other applicants are solicited.

The MSPP is the government. They have the authority and responsibility for both regulation and QA/QC of all Laboratories within the country. They are responsible for establishing norms and standards for laboratories.

The MSPP, as the government, is the only entity that has the authority to establish and operate the entire public health system which includes departmental hospitals and clinics where ARV services are being provided. The Ministry has developed public/private partnerships to help manage some of these sites but even at those sites that are managed by the private sector they are ultimately accountable to the MSPP for services provided and quality care. The MSPP still maintains a supervisor role for these sites.

The role of regulation and standard setting at a national level is inherently governmental. In order to fulfill its role in this area the Haitian Ministry of Health needs to have the capacity to independently verify compliance through a central HIV/AIDS quality assurance/quality control laboratory. If a private or non-governmental laboratory were allowed to take on this role it would call into question the independence of the results in order to favor laboratories associated with that organization.

C. Funding

Approximately $2,765,000 is available over a five year project period. $553,000 is available for a 12-month budget period in FY 2005, to be awarded September 15, 2005. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For program technical assistance, contact: Kathy Grooms, CDC Global AIDS Program, 1600 Clifton Road, NE, Mailstop E–04, Atlanta, GA 30333. Telephone: 404–639–8394. E-mail: *Kgrooms@cdc.gov.*

For financial, grants management, or budget assistance, contact: Vivian Walker, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2724. E-mail: *VEW4@CDC.GOV.*

Dated: August 12, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–16450 Filed 8–18–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10110, CMS–10136, CMS–10162, and CMS–R–0021]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) 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.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Manufacturer Submission of Average Sales Price (ASP) Data for Medicare Part B Drugs and Biologicals And Supporting Regulations in 42 CFR 414.804; *Form No.:* CMS–10110 (OMB #0938–0921); *Use:* In accordance with Section 1847A of the Social Security Act (the Act), Medicare Part B covered drugs and biologicals not paid on a cost or prospective payment basis are paid based on the average sales price of the drug or biological, beginning in CY 2005. The ASP data reporting requirements are specified in Section 1927 of the Act. The reported ASP data are used to establish the Medicare payment amounts. Specifically, CMS will utilize the ASP data to determine the drug payment amounts for CY 2005 and beyond. The interim final rule ''Medicare Program; Manufacturer Submission of Manufacturer's Average Sales Price (ASP) Data for Medicare Part B Drugs and Biologics'' (CMS–1380–IFC), published in the **Federal Register** on April 6, 2004 (66 FR 17936), set forth the ASP reporting format, Addendum A. The rule stated that, as we gain more experience with the ASP methodology, we may seek to modify the reporting requirements (data elements and format for submission) in the future. Based on our experience during the initial six reporting periods, we have found it necessary for carrying out section 1847A of the Act to expand the ASP data collected from manufacturers. We are proposing that, upon approval of this requested revision, in addition to the data elements in the original Addendum A (manufacturer name, National Drug Code (NDC), manufacturer's ASP, and number of units), the following data elements must be submitted quarterly by manufacturers: name of drug or biological, strength of the product, volume per item, number of items per NDC, wholesale acquisition costs (applies to NDCs assigned to single source drug and biological billing codes and NDCs during the initial period under section1847A(c)(4) of the Act), and expiration date of the last lot manufactured. We are proposing that manufacturers would no longer report ASP data for an NDC beginning the reporting period after the expiration date of the last lot manufactured. For NDCs first marketed or sold on or after October 1, 2005, we are also proposing to collect the date the NDC was first marketed and the date of first sale. We propose that manufacturers would be required to submit these dates to us once with the first data submission for new NDCs. *Frequency:* Recordkeeping and reporting—quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 120; *Total Annual Responses:* 480; *Total Annual Hours:* 17,760.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Care Management Performance (MCMP) Demonstration—Standardized Ambulatory Care Quality Collection Initiative; *Use:* The MCMP Demonstration was authorized by Section 649 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). This project requires the Secretary to establish a pay-for-performance 3-year pilot with physicians to promote the adoption and use of health information technology to improve the quality of patient care for chronically ill Medicare patients. This demonstration represents the first pay for performance project fostering the adoption of health information technology in small physician group practices and will enable a test of the concept to improve the quality and efficiency of care in Fee-for-Service (FFS) Medicare. *Form Number:* CMS–10136 (OMB #0938–0941); *Frequency:* Annually; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 800; *Total Annual Responses:* 800; *Total Annual Hours:* 19,200.

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Care Improvement Survey; *Use:* The purpose of this beneficiary survey is to obtain information about beneficiary behavioral change, physical functioning and satisfaction with the Chronic Care Improvement (CCI) programs, data required by legislation to form decisions related to expansion of the pilot programs. The chronic care improvement programs are to be designed to incorporate relevant features from private sector programs but also be sufficiently flexible to adapt to the unique needs of their Medicare populations. This survey is required to support the legislative mandate to evaluate the Chronic Care Improvement Programs. Beneficiary participation in the CCI–I program will be voluntary and will not change the scope, duration or amount of Medicare FFS benefits currently received by FFS Medicare participants. *Form Number:* CMS–10162 (OMB #0938–NEW); *Frequency:* Reporting—on occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 9,449; *Total Annual Responses:* 9,449; *Total Annual Hours:* 2,636.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Withholding Medicare Payments to Recover Medicaid Overpayments and Supporting Regulations in 42 CFR 447.31; *Use:* Overpayments may occur in either the Medicare and Medicaid program, at times resulting in a situation where an institution or person that provides services owes a repayment to one program while still receiving reimbursement from the other. Certain Medicaid providers which are subject to offsets for the collection of Medicaid overpayments may terminate or substantially reduce their participation in Medicaid, leaving the State Medicaid Agency unable to recover the amounts due. These information collection requirements give CMS the authority to recover Medicaid overpayments by offsetting payments due to a provider under the program. *Form Number:* CMS–R–0021 (OMB #0938–0287); *Frequency:* Reporting—on occasion; *Affected Public:* State, local or tribal government; *Number of Respondents:* 54; *Total Annual Responses:* 27; *Total Annual Hours:* 81.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/regulations/pra/,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice to: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 12, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–16472 Filed 8–18–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: State Child Access Program Survey—Grants to States for Access and Visitation.

OMB No.: 0970–0204 (current).

Description: The Federal Office of Child Support Enforcement (OCSE) requests an extension of the current survey—without change—for three additional fiscal years (FY 2006–2008).

States are required, on an annual basis, to provide OCSE with program data on projects that have been funded through the Grants to States for Access and Visitation Program. This program reporting requirement includes, but is not limited to, the collection of data on the number of participants served, referral sources, kinds of services delivered, identification of local service providers, and the number of non-custodial parents whose parenting time increased as a result of participating in such services.

The purpose of collecting this information is twofold: (1) To help OCSE monitor state utilization of grant funds; and (2) to compile data, on an annual basis, into a report that provides states—in addition to the general public—with information on individual state Access and Visitation Program in an effort to promote cross-fertilization of innovative services at the local level.

Respondents: State Child Access and Visitation Program Coordinators and administrators of state, court and/or local service providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Child Access Program Survey	324	1	15	4,860

Estimated Total Annual Burden Hours: 4,860. (FY 2006–2008)

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC, 20447. Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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; and (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 15, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–16423 Filed 8–18–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: National Clearinghouse on Child Abuse and Neglect Information (CAN) and National Adoption Information Clearinghouse (NAIC) Customer Satisfaction Evaluation Plan.

Description: The National Clearinghouse on Child Abuse and Neglect Information (CAN) and the National Adoption Information Clearinghouse (NAIC), services of the Children's Bureau within ACF, were established in 1974 and 1986, respectively. Both are dedicated to the mission of connecting professionals and concerned citizens to information on programs, research, legislation, and statistics regarding the safety, permanency, and well-being of children and families.

The Clearinghouses' main functions are identifying information needs, locating and acquiring information, creating information, organizing and storing information, disseminating information, and facilitating information exchange among professionals and concerned citizens. A number of vehicles are employed to accomplish these activities, including, but not limited to, Web site hosting, discussions with customers, and dissemination of publications (both print and electronic).

The Clearinghouses' Customer Satisfaction Evaluation Plan was initiated in response to Executive Order 12862 issued on September 11, 1993. The order calls for putting customers first and striving for a customer-driven government that matches or exceeds the best service available in the private sector. To that end, the Clearinghouses' Evaluation Plan was designed to better understand customers' needs and measure success in meeting those needs by obtaining input and feedback directly from customers. This feedback will be used to improve the quality of Clearinghouse products and services, in turn allowing limited resources to be targeted to improve those components that have the most impact on customer satisfaction. Information will be collected using close-ended electronic, telephone, paper and pencil, and in-person administration methods.

In addition to the above quantitative component of the evaluation plan, focus groups will be conducted with CAN and NAIC customers on a yearly basis to supplement the customer satisfaction surveys with a qualitative component.

Respondents: General customers are those who interact with the Clearinghouses via Web, e-mail, and telephone. Targeted customers are those to which selected services are delivered, such as subscribers to Children's Bureau Express (an online digest), recipients of

selected publications, and focus group participants.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Core Survey plus one of the following modules: Professional/Student; Web Site; Marketing; Personal Customer.	1,498	11 items on average (core and module surveys vary between 10 and 12 responses).	.29 minutes	80
Children's Bureau Express Survey	1,000	12 items	.29 minutes	58
Selected Publications Survey	Up to 250 annually (50 surveys per publication for 5 publications).	9 items	.29 minutes	11
Needs Assessment Focus Groups	7 on average (between 5 and 9) per Focus Group.	4 focus groups per year	60 minutes per Focus Group.	28
Estimated Total Annual Burden Hours				177

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 15, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–16424 Filed 8–18–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21264]

Collection of Information Under Review by Office of Management and Budget (OMB): 1625–0011

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 has forwarded one Information Collection Request (ICR)—1625–0011, CG–2554 Private Aids to Navigation, and CG–4143 Application for Class I Private Aids to Navigation Artificial Islands/Fixed Structures—abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes 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 September 19, 2005.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2005–21264] 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 St., 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 and (b) OIRA at (202) 395–6566, or e-mail to OIRA at *oira-docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a Web site on which you can post your comments.

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 Second Street SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 267–2326

or fax (202) 267–4814, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collection of information to determine whether the collection is 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 Information Collection Request (ICR) addressed. Comments to DMS must contain the docket number of this request, [USCG 2005–21264]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the September 19, 2005.

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,* and 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–2005–21264], 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 (70 FR 30963, May 31, 2005) required by 44 U.S.C. 3506(c)(2). That notice elicited one comment. The commenter discussed the issue of the state of New Jersey sinking old junk ships off its shore. The comment made no reference to our collection of information request and does not require a response from the Coast Guard.

Information Collection Request

Title: CG–2554 Private Aids to Navigation Application, and CG–4143 Application for Class I Private Aids to Navigation Artificial Islands/Fixed Structures.

OMB Control Number: 1625–0011.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of facilities and tank vessels, and certifying entities.

Forms: CG–2554 and CG–4143.

Abstract: The information on these private aid applications (CG–2554 and CG–4143) provides the Coast Guard with vital information about private aids to navigation and is essential for safe marine navigation. These forms are required under 33 CFR parts 66 and 67. The information is processed to ensure the private aid is in compliance with current regulations. Additionally, these forms provide the Coast Guard with information that can be distributed to the public to advise of new, or changes to, private aids to navigation.

Burden Estimates: The estimated burden has been decreased from 3,073 hours to 3,000 hours a year.

Dated: August 11, 2005.

Nathaniel S. Heiner,

Acting, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–16462 Filed 8–18–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Announcement of Test Program Regarding Electronic Foreign Trade Zone Admission Applications

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces the Bureau of Customs and Border Protection's (CBP) plan to conduct a voluntary test program to allow the submission of electronic Foreign Trade Zone (FTZ) admission applications. Pursuant to the terms of the test, an application for FTZ admission (CBP Form 214—''FTZ Admission and/or Status Designation'') may be filed electronically with CBP via the Automated Broker Interface (ABI). Parties not participating in the test may continue to file the CBP Form 214 in a paper format pursuant to existing FTZ procedures. The test program is limited to electronic FTZ admission applications for merchandise reported to CBP via air, sea, and rail manifest. CBP intends to implement a future phase of this test that will allow electronic FTZ admission applications for merchandise reported to CBP via truck manifest as soon as a CBP-approved electronic data interchange system exists for these transmissions. This notice informs interested members of the public of the eligibility and procedural requirements for participation in the test, outlines the evaluation methodology to be used, and invites public comment concerning any aspect of the planned prototype test.

DATES: The Electronic FTZ Admission Application test program will commence no earlier than September 30, 2005, and will run for approximately 6 months with a final evaluation to take place at the end of that period. CBP may extend the test period by way of announcement in the **Federal Register**.

Comments concerning this notice and any aspect of the prototype may be submitted at any time during the test period.

ADDRESSES: Written comments regarding this notice should be addressed to Customs and Border Protection, Cargo Control Branch, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Gary Rosenthal, Customs and Border Protection, Office of Field Operations, via e-mail at *gary.rosenthal@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Electronic Foreign Trade Zone Admission Application Prototype: Planned Component of the National Customs Automation Program

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subpart B of Title VI of the Act concerns the National Customs Automation Program (NCAP), an electronic system for the processing of commercial importations. Within subpart B, section 631 of the Act added section 411 to the Tariff Act of 1930 (19 U.S.C. 1411–1414), which defines the NCAP, provides for the establishment of and participation in the NCAP, and includes a list of existing and planned components. Section 411(a)(2)(G) identifies any program initiated by CBP to carry out the automation goals of this subpart as a planned NCAP component. The planned test program described in this document falls within this category of planned NCAP component.

Section 101.9(b) of Title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP planned components. The Electronic Foreign Trade Zone (FTZ) Admissions Application prototype is being tested in accordance with this provision.

Description of the Test Program

The Electronic FTZ Admission Application test program permits a participant to submit an electronic version of the CBP Form 214 (''FTZ Admission and/or Status Designation'') to CBP via the Automated Broker Interface (ABI) of Customs Automated Commercial System (ACS). Any person not participating in the prototype will be required to submit a paper CBP Form 214 pursuant to existing FTZ admission procedures.

The test program is limited to electronic FTZ admission applications for merchandise reported to CBP via air, sea, and rail manifest. It is noted that CBP intends to implement a future phase of this test that will allow electronic FTZ admission applications for merchandise reported to CBP via truck manifest as soon as a CBP-approved electronic data interchange system exists for these transmissions.

Regulatory Provisions Suspended

Subpart C to part 146 of the CFR prescribes the conditions applicable to admission of merchandise into a foreign trade zone. To the extent that certain provisions within subpart C to part 146 may be incompatible with the terms of this test program, the affected regulatory provisions will be suspended for the duration of the prototype test.

Test Commencement Date

The test program will commence no earlier than September 30, 2005, and will run for a 6-month period with a final evaluation to take place at the end of the test period. CBP may extend the prototype and any such extension will be announced in the **Federal Register**.

Participant Eligibility

Eligible participants in the Electronic FTZ Admissions Application test program include:

- FTZ operators
- FTZ Admission Applicants
- Agents of FTZ Admission Applicants

Participation in the test is voluntary and there are no application procedures.

Prototype Procedures

Submission of Electronic CBP Form 214 and Related Data

Test participants must request permission to admit merchandise into a FTZ by electronically transmitting the CBP Form 214 data elements to CBP via ABI. The data transmission may cover a single shipment of merchandise or be a consolidated transmission that covers multiple shipments to a single zone. CBP must receive the CBP Form 214 before the merchandise can be released for admission into the FTZ. An exception to this requirement exists for test participants who are authorized to use the FTZ direct delivery procedures, as discussed below.

The test program will also incorporate transmissions of data on merchandise that is transported to a FTZ or from a FTZ if the data transmission is made via CBP Form 7512 in-bond transaction or its electronic equivalent.

Prior Notice Reporting Requirements

Test participants, including those approved to participate under direct delivery procedures, must comply with the prior notice reporting requirements stipulated in the Public Health Security and Bioterrorism Preparedness and Responsive Act of 2002 (''the Bioterrorism Act''), Public Law 107–188. Title III of the Bioterrorism Act contains provisions relating to providing the Department of Health and Human Services with prior notice regarding certain information about foods that are imported or offered for import into the United States.

Direct Delivery Procedures

As a general rule, a test participant who is also authorized to use the direct delivery procedures prescribed in § 146.39 (19 CFR 146.39) to admit merchandise into a FTZ may transmit the required data to CBP on an electronic CBP Form 214 no later than the close of business on the business day following receipt of the merchandise into the FTZ inventory control and recordkeeping system.

With regard to the applicability of direct delivery procedures in the context of the test program, two exceptions to the above rule are noted. First, as stated above, direct delivery participants are subject to any applicable prior notice reporting requirements set forth in the Bioterrorism Act. Second, in the absence of a CBP Form 7512 in-bond transaction authorizing direct delivery to the FTZ, or its electronic equivalent, a permit to transfer request must be electronically transmitted to CBP before the merchandise can be released for admission.

FTZ Operators as Test Participants

Under the test program, a FTZ operator will be able to accept or reject the merchandise, assume custodial responsibility for the accepted merchandise and report discrepancies between the documents covering the merchandise and the merchandise itself, admit zone status merchandise transferred from another zone, change zone status, admit domestic status merchandise, and transmit post admission inventory adjustment transactions via ABI.

Transmittal of Statistical Data to the Bureau of Census

After permission to transfer merchandise into a FTZ is granted, CBP will transmit statistical data to the Bureau of the Census through an automated link.

CBP Form 214 Required Data Elements

Participants in the test must provide CBP with the following data elements:

- A code representing the action to be taken (*i.e.*, add, delete, replace).
- A line item number.
- The zone number designated in the foreign trade zone grant.
- The port code where the FTZ is located as shown in Schedule D, Harmonized Tariff Schedule of the United States (HTSUS).
- An indicator specifying whether the merchandise is being admitted into the FTZ under direct delivery procedures.
- The Automated Broker Interface (ABI) filer code.
- The ABI routing code and optional office extension for one additional ABI participant who will receive a copy of the electronic CBP Form 214 and subsequent electronic notifications.
- The IRS number, Importer of Record Number or EIN of the applicant.
- An indicator specifying the admission type.
- The mode of transportation code. Valid codes are listed in Appendix B of the CATAIR (CBP Publication 552, Customs and Trade Automated Interface Requirements).
- The name of the conveyance (if not a vessel, the name of the transportation company).
- The vessel voyage, truck or rail trip, or aircraft flight number.
- The country of export.
- The export date. For merchandise arriving in the U.S. by vessel: the month, day and year on which the vessel departed the last port of the country of exportation. For merchandise exported by air: the month, day and year on which the aircraft departed the last airport of the country of exportation. For merchandise exported by truck or rail: the month, day and year in which the carrier crossed the border of the country of exportation.
- The import date. For merchandise arriving in the U.S. by vessel: the month, day and year on which the vessel transporting the merchandise from the foreign country arrived within the limits of the U.S. port at which the merchandise was unladen. For merchandise arriving in the U.S. other than by vessel: the month, day and year in which the merchandise arrived within the territory of the U.S.
- The zone admission number (zone number, calendar year, and control number).
- The U.S. port of unlading (the port at which the merchandise was unladen whether or not the port is a CBP port of entry). Valid codes are listed in Schedule D issued by the Bureau of the Census.
- The foreign port of lading.
- The bill of lading or airway bill number.
- The house bill number.
- The Standard Carrier Alpha Code (SCAC) identifier of the importing carrier.
- The immediate transportation (IT) number assigned to in-bond shipments and the date the CBP Form 7512 was prepared.
- The number of packages and the country of origin. An indication of the quantity and unit of measure (cartons, cases, bundles, etc.) in the shipment as stated in the Customs Automated Manifest Interface Requirements (CAMIR). For containerized merchandise, an indication of the number of packages within the container(s) and the container number(s). For bulk shipments, show ''1 Bulk.'' Enter the country of origin code, provided in Annex B, ISO code, Harmonized Tariff Schedule (HTS), which represents the country of origin in which the product was manufactured, mined, or grown. If the merchandise is from more than one country of origin, the country of origin will be indicated separately against each HTS subheading or group of subheadings.
- A detailed description of the merchandise at the line item level.
- The Manufacturer Identification (MID) number (as required for type 01 entries).
- The applicable HTS number(s).
- The quantity of the merchandise for each HTS number.
- The quota category (if applicable).
- The gross weight in kilograms of the merchandise. Supply separate gross weight information for each HTS subheading.
- The separate value and aggregate charges: For each HTS, enter the purchase price (in U.S. dollars) or, if the merchandise was not acquired by purchase, the equivalent of such price. Also, report the aggregate cost (in U.S. dollars) of freight, insurance, and all other costs, charges and expenses incurred in bringing the merchandise from alongside the carrier at the foreign port of exportation in the country of exportation in addition to unlading the merchandise at the first U.S. port of entry.
- The indicator designating a special program and country affecting duty payments (if applicable).
- If applicable, a qualifier code and reference identifier associated with the shipment. Valid qualifiers are listed in the CATAIR. Code ''IM'' will be added to indicate importer.
- The Harbor Maintenance Fee incurred for loading or unloading the commercial cargo from a commercial vessel.
- The FTZ status designation of the merchandise.
- The container number if a permit to transfer is requested.
- Concurrence/discrepancy data relating to the admission application/permit to transfer.
- The IRS number of the carrier responsible for the movement of merchandise into the FTZ following issuance of a permit to transfer.
- The Facilities Information and Resources Management Systems (FIRMS) code identifying the location that the merchandise (moving on a permit to transfer) is being delivered to.
- The three position airport code if the bill of lading is Air AMS.
- An indicator if the merchandise is subject to Bioterrorism Act of 2002 requirements.

Test participants are responsible for the accuracy and completeness of all data transmitted under the prototype.

Processing of Electronic FTZ Admission Applications

Upon approval of an electronic FTZ admission application, CBP will transmit electronic notice to the FTZ operator authorizing admission of the merchandise into the FTZ. As noted above, this approval process does not apply to merchandise admitted to a FTZ under direct delivery procedures.

After CBP receives notice of the FTZ operator's decision to grant or deny admission, CBP will electronically transmit approval/denial to transfer the merchandise into the FTZ electronically to the test applicant or the applicant's agent, and to the carrier of the merchandise. CBP will also provide electronic notice to these parties as to whether the merchandise is subject to CBP examination. In addition, test program participants and carriers will be able to receive electronic notification concerning the status of an admission request.

A test participant whose FTZ admission application is rejected by CBP will be provided with an opportunity to correct the reported error. A complete re-transmission of the entire admission application through ABI is required by CBP.

Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or suspension from this test for any of the following:

• Failure to abide by the terms and conditions of this test, and any applicable laws and regulations.

• Failure to exercise reasonable care in the execution of participant obligations.

• Misuse of the automated CBP Form 214 (*i.e.*, engaging in unauthorized disclosure or any activity which interferes with the successful evaluation of the new technology).

The Executive Director, Trade Compliance and Facilitation, will administer suspensions for misconduct. A written notice proposing suspension will be provided to the participant. Such notice will apprise the participant of the alleged facts or conduct warranting suspension and will inform the participant of the date that the suspension will begin. Any decision proposing suspension of a participant may be appealed in writing to the Assistant Commissioner, Office of Field Operations, 1300 Pennsylvania Ave., NW., Washington, DC 20229, within 15 calendar days of the notification date. An appeal must address the alleged facts or conduct charges contained in the notice and state how compliance has been or will be achieved. In cases of non-payment, late payment, willful misconduct or where public health interests or safety is concerned, the suspension may be effective immediately. The same appeal procedures apply in cases of immediate suspension.

Test Evaluation Criteria

To ensure adequate feedback, participants are required to participate in an evaluation of this test. CBP also invites all interested parties to comment on the design, conduct and implementation of the test at any time during the test period. CBP will publish the final results in the **Federal Register** and the CBP Bulletin as required by section 101.9 (b) of Title 19 of the CFR.

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis;

2. Questionnaires from both trade participants and CBP addressing such issues as:

• Workload impact (workload shifts/volume, cycle times, *etc.*)

• Cost savings

• Policy and procedure accommodation

• Trade compliance impact

• Problem resolution

• System efficiency

• Operational efficiency

• Other issues identified by the participant group

Dated: August 12, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–16427 Filed 8–18–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–33]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: Effective August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988, court order in *National Coalition for the Homeless* v. *Veterans' Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 11, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–16243 Filed 8–18–05; 8:45 am]

BILLING CODE 4210–29–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–486 Enforcement Proceedings]

Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof; Notice of a Commission Determination To Review and on Review To Modify an Enforcement Initial Determination; Termination of Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an enforcement initial determination (EID) of the presiding administrative law judge (ALJ) in the above-captioned investigation finding a violation of a limited exclusion order, but declining to recommend any enforcement measures. On review, the Commission has determined to modify the ID by correcting the ALJ's finding that the Commission intended to foreclose the possibility of issuing a general exclusion order as a remedy in the above-captioned proceedings when it denied complainant's petition for modification of the existing limited exclusion order. The Commission has determined not to review the reminder of the EID.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., telephone 202–205–3041, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On July 3, 2003, at the conclusion of Inv. No. 337–TA–486, Certain Agricultural Tractors, the Commission issued a limited exclusion order which denies entry to

tractors manufactured by a single Chinese entity, respondent Beiqi Futian Automobile Co., Ltd. (Futian), that infringe the trade dress of complainant New Holland North America. On August 2, 2004, New Holland filed a single document styled ''Consolidated Enforcement Complaint and Petition for Modification,'' in which it requested both enforcement and modification of the existing limited exclusion order by replacing the limited exclusion order with a general exclusion order. On November 15, 2004, the Commission ordered the institution of a formal enforcement proceeding to determine whether Futian (now known as Beiqi Foton Motor Co., Ltd.) and Shandong Worldbest Shantou Co., Ltd., an allegedly related entity, (collectively, ''the enforcement respondents'') were in violation of the limited exclusion order, and what if any enforcement measures were appropriate. The Commission found that the petition for modification proceedings to obtain a general exclusion order failed to satisfy Commission rule 210.76(a) in that the complainant did not provide an argument concerning the legal basis for the broad modification sought. Thus, the Commission did not institute modification proceedings.

The Commission assigned the enforcement proceedings to the ALJ who conducted the original investigation concerning violation. The Commission subsequently set a target date of November 21, 2005, for completion of the investigation in light of *VastFame et al.* v *USITC*, 386 F.3d 1108 (Fed. Cir. 2004), which holds that the Commission's authority for conducting enforcement proceedings is found in 19 U.S.C. 1337(b), a provision which requires the Commission to set a target date for completion of its investigations within 45 days of institution.

On February 4, 2005, the ALJ issued an ID finding the two enforcement respondents in default, and pursuant to Commission Rule 210.16(b)(3), to have waived their right to appear, be served with documents, or contest the allegations in the enforcement complaint. The Commission declined to review the ID and it became the final determination of the Commission.

On May 13, 2005, the ALJ issued an EID finding that the existing limited exclusion order had been violated by the enforcement respondents, but recommending against any enforcement measures by the Commission because: (1) He believed the Commission did not intend for him to issue a general exclusion order; (2) New Holland had failed to meet the statutory criteria for a general exclusion order in default investigations because it had not established a violation of section 337 by substantial, reliable, and probative evidence as required by 19 U.S.C. 1337(g)(2)(A); and (3) New Holland did not seek any enforcement measures other than a general exclusion order.

The Commission has determined to review and modify the EID to the extent that the Commission does not adopt the ALJ's conclusion that the Commission did not intend for him to issue a general exclusion order when it instituted these proceedings. Rather, the Commission determined only to deny New Holland's petition for modification. The Commission adopts the EID's finding that New Holland failed to meet the statutory criteria for a general exclusion order because it did not established a violation of its trade dress by substantial, reliable, and probative evidence as required by section 337(g)(2)(A). The Commission agrees with the ALJ that no other enforcement measures are appropriate because New Holland did not seek any enforcement measure other than a general exclusion order.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: August 15, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–16426 Filed 8–18–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1094 (Preliminary)]

Metal Calendar Slides From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of metal calendar slides, provided for in subheading 7326.90.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On June 29, 2005, a petition was filed with the Commission and Commerce by Stuebing Automatic Machine Co., Cincinnati, OH, alleging that an industry in the United States is materially injured by reason of LTFV imports of metal calendar slides from Japan. Accordingly, effective June 29, 2005, the Commission instituted antidumping duty investigation No. 731–TA–1094 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 11, 2005 (70 FR 39788). The conference was held in Washington, DC, on July 20, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Vice Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson dissenting. Commissioner Marcia E. Miller did not participate in this determination.

The Commission will transmit its determination in this investigation to the Secretary of Commerce on August 15, 2004. The views of the Commission are contained in USITC Publication 3792 (August 2005), entitled Metal Calendar Slides from Japan: Investigation No. 731–TA–1094 (Preliminary).

By order of the Commission.
Issued: August 15, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–16425 Filed 8–18–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 16, 2005, Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The company plans to manufacture bulk product and dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 18, 2005.

Dated: August 11, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–16468 Filed 8–18–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 7, 2005, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The company plans to manufacture bulk products for finished dosage units and distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 18, 2005.

Dated: August 11, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–16469 Filed 8–18–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 29, 2005, and published in the **Federal Register** on April 6, 2005, (70 FR 17473), Polaroid Corporation, 1265 Main Street, Building W6, Waltham, Massachusetts 02454, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-Dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The company plans to manufacture the listed controlled substance in bulk for conversion into non-controlled substances.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Polaroid Corporation to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Polaroid Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: August 12, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–16466 Filed 8–18–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide

manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on April 8, 2005, Research Triangle Institute, Kenneth H. Davis Jr., Hermann Building East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic class of controlled substance listed in Schedule II:

Drug	Schedule
Cocaine (9041)	II

The company plans to import small quantities of the listed controlled substance for the National Institute of Drug Abuse and other clients.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 19, 2005.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c),(d),(e) and (f) are satisfied.

Dated: August 11, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–16467 Filed 8–18–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 26, 2005, Sigma Aldrich Research, Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of N-Benzylpiperazine (7493), a basic class of controlled substance listed in Schedule I.

The company plans to manufacture the listed controlled substance in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 18, 2005.

Dated: August 12, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–16465 Filed 8–18–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Labor Certification for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Administrative Measures To Improve Program Performance

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration, Office of National Programs, is soliciting comments concerning the proposed extension of the collection for the Labor Certification for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the Unites States; Administrative Measures to Improve Program Performance. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before October 18, 2005.

ADDRESSES: John R. Beverly, Administrator, Office of National Programs, U.S. Department of Labor, Employment and Training Administration, Room C–4312, 200 Constitution Avenue, NW., Washington, DC 20210, phone: (202) 693–3010 (this is not a toll-free number); Fax: (202) 693–2768; e-mail: *ETAperforms@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Gregory Wilson, Program Analyst, Division of Foreign Labor Certification, U.S. Department of Labor, Employment & Training Administration, Room C–4312, 200 Constitution Avenue, NW.,

Room C–4312, Washington, DC 20210; phone (202) 693–3010 (this is not a toll-free number); Fax: (202) 693–2768; e-mail: *ETAperforms@dol.gov*.

SUPPLEMENTARY INFORMATION:

Background

At 64 FR 34958 (June 29, 1999), the Department amended its regulations to improve program performance related to the certification of temporary employment of nonimmigrant agricultural (H–2A workers) in the United States. One improvement was to modify the requirement that an employer notify the State Workforce Agency (SWA), in writing, of the exact date on which the H–2A workers depart for the employer's place of business. The rule states that the departure date is now deemed to be the third day before the employer's first date of need for the foreign workers. Only if the workers do not depart by the date of need is the employer required to notify the SWA as soon as the employer knows that the workers will not depart by the first date of need, but no later than such date of need. The employer also must notify the SWA of the workers' expected departure date en route to the employment, if known. The departure date is used as the starting date of the contract period for the purposes of the ''50 percent rule'' under 20 CFR 655.103(e). That regulation provides that the employer must continue to provide employment to any qualified and eligible U.S. worker who applies to the employer until 50 percent of the work contract period under which the foreign worker in the job has elapsed. The employer's obligation to engage in positive recruitment ends on the day the foreign workers depart for the employer's place of business. The employer, however, must keep an active job order on file until the ''50 percent rule'' has been met. The amendment to the regulations regarding the departure date notification substantially reduced the reporting burden on employers yet continued to allow the SWA to properly administer the ''50 percent rule.''

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

DOL and the SWAs continue to use the dates listed on the employer's application to calculate the employer's responsibilities under the ''50-percent rule.'' The departure date (the third date before the date of need) is deemed the start date of the contract period in administration of the ''50-percent rule'' under 20 CR 655.103(e).

The collection of information requirement is being extended to reflect annual reporting hour burdens changes based on an increase in the number of respondents.

Type Of Review: Extension without change.

Agency: Employment and Training Administration, Labor.

Title: Labor Certification for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the Unites States; Administrative Measures to Improve Program Performance.

OMB Number: 1205–0404.

Affected Public: Farms and other business or for-profit entities.

Total Respondents: 335.

Frequency Of Response: On occasion.

Total Responses: 335.

Average Burden Hours Per Response: 15 minutes.

Estimate Total Annual Burden Hours: 335 respondents × .25 hours = 84 hours.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the Information Collection Request; they will also become a matter of public record.

Dated: August 15, 2005.

John R. Beverly,

Administrator, Office of National Programs.

[FR Doc. E5–4537 Filed 8–18–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration to the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

Volume I

Vermont
VT20030044 (Jun. 13, 2003)

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified as listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Connecticut
CT20030001 (Jun. 13, 2003)
CT20030003 (Jun. 13, 2003)
CT20030004 (Jun. 13, 2003)
Massachusetts
MA20030001 (Jun. 13, 2003)
MA20030002 (Jun. 13, 2003)
MA20030003 (Jun. 13, 2003)
MA20030004 (Jun. 13, 2003)
MA20030007 (Jun. 13, 2003)
MA20030009 (Jun. 13, 2003)
MA20030010 (Jun. 13, 2003)
MA20030017 (Jun. 13, 2003)
MA20030018 (Jun. 13, 2003)
MA20030019 (Jun. 13, 2003)
MA20030020 (Jun. 13, 2003)
MA20030021 (Jun. 13, 2003)
New Jersey
NJ20030001 (Jun. 13, 2003)
NJ20030002 (Jun. 13, 2003)
NJ20030009 (Jun. 13, 2003)
New York
NY20030002 (Jun. 13, 2003)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. The subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 11th day of August, 2005.

Shirley Ebbesen,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–16269 Filed 8–18–05; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Request for Comments—LSC Budget Request for FY 2007

AGENCY: Legal Services Corporation, Legal.

ACTION: Request for Comments—LSC Budget Request for FY 2007.

SUMMARY: The Legal Services Corporation is beginning the process of developing its FY 2007 budget request to Congress and is soliciting suggestions as to what the request should be.

DATES: Written comments must be received on or before September 9, 2005.

ADDRESSES: Written comments may be submitted by mail, fax or e-mail to Charles Jeffress at the addresses listed below.

FOR FURTHER INFORMATION CONTACT: Charles Jeffress, Chief Administrative Officer, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007; 202–295–1630 (phone); 202–337–6386 (fax); *cjeffress@lsc.gov.*

SUPPLEMENTARY INFORMATION: The Legal Services Corporation's (LSC) mission is to promote equal access to justice in our Nation and to provide for high-quality civil legal assistance to low income persons. LSC submits an annual budget request directly to Congress and receives an annual direct appropriation to carry out its mission. For the current fiscal year (FY 2005), LSC received an appropriation of $330,803,705 of which $312,375,183 was for basic field programs; $2,538,633 was for the Office of Inspector General; $12,826,362 was for management and administration; $1,255,010 was for technology initiative grants; and $1,808,517 was for grants to offset losses due to census adjustments. Pub. L. 108–447, 118 Stat. 2809. (The FY 2006 budget request has already been submitted to Congress and LSC is awaiting Congressional action.)

As part of its annual budget and appropriation process, LSC notifies the Office of Management and Budget (OMB) as to what the LSC budget request to Congress will be for the next fiscal year. Accordingly, LSC is currently in the process of formulating its FY 2007 budget request.

LSC invites public comment on what its FY 2007 budget request should be. Interested parties may submit comments to LSC by September 9, 2005. More information about LSC can be found at LSC's Web site: *http://www.lsc.gov.*

Victor M. Fortuno,

Vice President and General Counsel.

[FR Doc. 05–16460 Filed 8–18–05; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL COUNCIL ON DISABILITY

International Watch Advisory Committee Meetings (Conference Calls)

AGENCY: National Council on Disability (NCD).

TIME AND DATES: 12 noon, eastern time.

November 3, 2005
January 5, 2006
March 2, 2006
May 4, 2006
July 6, 2006
September 7, 2006

PLACE: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

STATUS: All parts of these conference calls will be open to the public. Those interested in participating in conference calls should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for each conference call.

AGENDAS: Roll call, announcements, overview of accomplishments, planning, reports, new business, adjournment.

FOR FURTHER INFORMATION CONTACT: Joan M. Durocher, Senior Attorney Advisor and Designated Federal Official, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *jdurocher@ncd.gov* (e-mail).

INTERNATIONAL WATCH ADVISORY COMMITTEE MISSION: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

Dated: August 11, 2005.

Mark S. Quigley,

Director of Communications and Acting Executive Director.

[FR Doc. 05–16471 Filed 8–18–05; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 7, 2005.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Education and Training Grants, submitted to the Division of Preservation and Access at the July 1, 2005 deadline.

2. *Date:* September 13, 2005.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Research and Development Projects Grants, submitted to the Division of Preservation and Access at the July 1, 2005 deadline.

3. *Date:* September 20, 2005.

Time: 8:30 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for EDSITEment in Peer Review, submitted to the Division of Education Programs at the July 30, 2005 deadline.

4. *Date:* September 26, 2005.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American History and Culture, submitted to the Division of Education Programs at the August 10, 2005 deadline.

5. *Date:* September 27, 2005.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American History and Culture, submitted to the Division of Education Programs at the August 10, 2005 deadline.

6. *Date:* September 28, 2005.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Landmarks of American History and Culture, submitted to the Division of Education Programs at the August 10, 2005 deadline.

7. *Date:* September 30, 2005.

Time: 9 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications for Preservation and Access—History I, submitted to the Division of Preservation and Access at the July 15, 2005 deadline.

Michael McDonald,

Acting Advisory Committee Management Officer.

[FR Doc. 05–16497 Filed 8–18–05; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Nuclear Management Company, Llc (Nmc), Point Beach Nuclear Plant, Units 1 and 2; Notice of Availability of the Final Supplement 23 to the Generic Environmental Impact Statement Regarding License Renewal for Point Beach Nuclear Plant, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (Commission) has published a final plant-specific supplement to the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants'' (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–24 and DPR–27 for an additional 20 years of operation at Point Beach Nuclear Plant, Units 1 and 2 (PBNP). PBNP is operated by Nuclear Management Company, LLC (NMC) and is owned by Wisconsin Electric Power Company (WEPCO). PBNP is located on the western shore of Lake Michigan in Two Rivers, Wisconsin, approximately 30 miles southeast of Green Bay, Wisconsin. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. As discussed in Section 9.3 of the final Supplement 23, based on (1) The analysis and findings in the GEIS, (2) the NMC Environmental Report; (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for PBNP are not so great that preserving the option of license renewal for energy-planning decision makers would be unreasonable.

The final Supplement 23 to the GEIS is publicly available at the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html;* a link is provided to access documents through the Internet-based component of ADAMS. The accession number for the final Supplement 23 to the GEIS is ML052230490. 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, or 301–415–4737, or by e-mail at *pdr@nrc.gov.* In addition, the Lester Public Library, located at 1001 Adams Street, Two Rivers, Wisconsin, has agreed to make the final

Supplement 23 to the GEIS available for public inspection.

For further information, contact: Ms. Stacey Imboden, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC, 20555. Ms. Imboden may be contacted at 1–800–368–5642, extension 2462 or via e-mail at *SXF@nrc.gov.*

Dated at Rockville, Maryland, this 12th day of August, 2005.

For the Nuclear Regulatory Commission.

Andrew Kugler,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4530 Filed 8–18–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Sequoyah Fuels Corporation, Gore, OK

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–6629; fax number: (301) 415–5955; e-mail: *mhf1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to Materials License No. SUB–1010 issued to Sequoyah Fuels Corporation (the licensee), to authorize the licensee to implement a ground water monitoring plan (GWMP) at its Gore, Oklahoma facility. The NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The proposed action is implementation of the GWMP. The GWMP identifies well, seep, and surface water locations where samples would be collected, the schedule for sample collection, and the constituents that would be analyzed for.

The licensee has been monitoring ground water at the site since the 1970's under requirements in its NRC license and as a result of U.S. Environmental Protection Agency requirements under the Resource Conservation Recovery Act. The GWMP would rely in large part on existing monitoring points. However, 157 existing wells would be abandoned and plugged and 10 new wells would be installed. Abandoned wells would be plugged in accordance with Oklahoma requirements to ensure that they would not provide pathways between aquifers. New wells would be drilled and completed using standard equipment and techniques for shallow wells (the deepest well to be drilled would be approximately 78 feet below ground surface). The licensee estimates that well drilling and plugging activities would be completed in about 4 months.

Drilling additional groundwater monitoring wells would consist of using a drill rig to bore holes into the subsurface and then constructing monitoring wells using PVC piping, with sand and grout placed in-between the PVC pipe and the soil. The licensee has not contracted with a drilling company, pending NRC approval of the GWMP, but expects that the bidder chosen would likely use one or two drill rigs to accomplish this work. Drill cuttings and the small potential for a minor amount of dust may occur while drilling with minor surface disruption. In addition, a number of monitoring wells would be abandoned in accordance with the State of Oklahoma well abandonment criteria. A drill rig may also be used to accomplish this and a small amount of dust may occur. Cement grout would be placed into the borehole to seal the hole in order to prevent surface runoff from migrating down the drill hole.

On June 12, 2003, the licensee requested that the NRC approve the proposed amendment. As a result of NRC staff review, the GWMP was revised several times, and the final version was submitted on February 25, 2005. The licensee's request for the proposed amendment was previously noticed in the **Federal Register** on August 25, 2003, (68 FR 51033) with a notice of an opportunity to request a hearing.

The staff has prepared the EA in support of the proposed license amendment. The only potential environmental impacts of implementing the GWMP, would be those associated with the necessary physical activities of plugging abandoned wells and drilling and completing several new wells. The drill rigs to be used would generate a moderate amount of noise (most operators wear ear protection) but as the nearest resident is about a half a mile away with a buffer zone of trees, noise impacts are not expected. The drilling and plugging operations may also generate a small amount of dust but the impact offsite would be minor to nonexistent. These impacts would only exist for the short period of time necessary to complete these actions and are very minor.

III. Finding of No Significant Impact

On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Document	ADAMS accession No.	Date
SFC's Amendment Requests	ML031710847	06/12/2003
SFC's Amendment Requests	ML050680226	02/25/2005
NRC's Environmental Assessment	ML052200616	08/09/2005

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to pdr@nrc.gov.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 10th day of August, 2005.

For the Nuclear Regulatory Commission.

Myron Fliegel,

Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–4531 Filed 8–18–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36974]

Notice of a Public Meeting Regarding Pa'ina Hawaii, LLC, License Application Request for the Operation of an Irradiator In Honolulu, HI

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received on June 27, 2005, from Pa'ina Hawaii, LLC, a Hawaiian owned company, an application to build and operate a commercial pool type industrial irradiator in Honolulu, Hawaii, near the Honolulu International Airport. This commercial irradiator will irradiate fresh fruit and vegetables bound for the mainland from the Hawaiian Islands, cosmetics, and pharmaceutical products. The irradiator will also be used by the applicant to conduct research and development projects, and irradiate a wide range of other materials as specifically approved by the NRC on a case-by-case basis.

The NRC plans to hold a public meeting to solicit comments from members of the public on the proposed license application. The meeting is open to the public and all interested parties may attend. This meeting is the first of several public meetings that the NRC will hold in Hawaii to enhance public awareness of the NRC's independent regulatory role in protecting public health and safety and the environment, to allow public involvement in NRC decision-making matters associated with this license application, and to promote two-way communication on matters related to the NRC's licensing and inspection processes. The public is invited to participate in this meeting by providing comments and asking questions throughout the meeting.

DATES: Wednesday, August 31, 2005, from 7 p.m. to 9 p.m.

ADDRESSES: Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii 96814. Telephone number 808–955–4811.

FOR FURTHER INFORMATION CONTACT: Roberto J. Torres, Acting Chief, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, telephone (817) 860–8189, fax (817) 860–8188, or by e-mail: *rjt@nrc.gov*.

Agenda: Welcome; NRC staff presentation on licensing and inspection processes; public comment.

Dated in Arlington, Texas this 10th day of August, 2005.

For the Nuclear Regulatory Commission.

Roberto J. Torres,

Acting Chief, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E5–4529 Filed 8–18–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Emergency Clearance and 60 Day Notice for Comment for a Reinstatement, With Change, of a Previously Approved Collection: OPM Form 1300, Presidential Management Fellows Program Online Application and Resume Builder

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted a request to the Office of Management and Budget (OMB) for emergency clearance and review for a reinstatement, with change, of a previously approved collection for the OPM Form 1300, Presidential Management Fellows (PMF) Program Online Application and Resume Builder. Approval of the PMF Online Application and Resume Builder is necessary to facilitate the timely registration, nomination, selection, and placement of PMF finalists in Federal agencies. This also serves as the 60 Day Notice for review for full clearance.

As a result of Executive Order 13318, the OPM issued a final rule on May 19, 2005 (FR, Vol. 70, No. 96, Page 28775) implementing new program regulations effective June 20, 2005. Consistent with these new regulations, the following significant changes have been made to the application and nomination process: (1) The programmatic guidance in the Program and Application Overview, found under the PMF Web site's ''How to Apply'' section, was rewritten to reflect myriad changes resulting from the new regulations; (2) the nomination process was modified to clarify that eligible graduate students are to be nominated by their school's Dean, Chairperson, or Academic Program Director (*i.e.* a nominating official), and not by a designee or nomination coordinator; and (3) the dates and times were revised from last year to reflect the current academic year of 2005/2006.

We estimate 3,500 to 4,000 applications will be received and processed in the 2005/2006 open season for PMF applications. During the 2004/2005 open season OPM received approximately 3,321 applications, leading to 3,073 nominations by colleges and universities. We estimate students will need 2 hours to complete the OPM Form 1300 and electronically submit it to their school's nominating official. In addition, we estimate school nominating officials will need one-half hour to receive, review, and render a decision on the student's application for nomination into the PMF Program. The annual estimated burden for nominees is 8,000 hours and 2,000 hours for school nominating officials, for a total of 10,000 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions on the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606–8358, fax (202) 418–3251, or e-mail to *mbtoomey@opm.gov*. Please include your complete mailing address with your request.

DATES: Comments on this proposal for emergency review should be received within 5 calendar days from the date of this publication. We are requesting OMB to take action within 10 calendar days from the close of this **Federal Register** Notice on the request for emergency review.

Comments are encouraged and will be accepted for 60 days until October 18, 2005.

ADDRESSES: Send or deliver comments to: U.S. Office of Personnel Management, HRPS\CLCS\PMFP, ATTN: Rob Timmins, 1900 E Street, NW., Room 1425, Washington, DC 20415–9820, E-mail: *pmf@opm.gov*; and

Brenda Aguilar, OPM Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–16591 Filed 8–17–05; 1:29 pm]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

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

Title and purpose of information collection: Medicare; OMB 3220–0082. Under section 7(d) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the railroad retirement system. The RRB uses Form AA–6, Employee Application for Medicare; Form AA–7, Spouse/Divorced Spouse Application For Medicare; and Form AA–8, Widow/Widower Application for Medicare; to obtain the information needed to determine whether individuals who have not yet filed for benefits under the RRA are qualified for Medicare payments provided under Title XVIII of the Social Security Act.

Further, in order for the RRB to determine if a qualified railroad retirement beneficiary who is claiming supplementary medical insurance coverage under Medicare is entitled to a Special Enrollment Period (SEP) and/or premium surcharge relief because of coverage under an Employer Group Health Plan (EGHP), it needs to obtain information regarding the claimant's EGHP coverage, if any. The RRB uses Form RL–311-F, Evidence of Coverage Under An Employer Group Health Plan, to obtain the basic information needed by the RRB to establish EGHP coverage for a qualified railroad retirement beneficiary. Completion of the forms is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes no changes to Forms AA–6, AA–7 and AA–8. The RRB proposes revising Form RL–311–F by adding a new item, Item 2, ''Name of the Group Health Plan''. In addition the RRB proposes minor, non-burden impacting, editorial and formatting changes. The RRB estimates that 180 Form AA–6's, 50 Form AA–7's, 10 Form AA–8's, and 800 RL–311–F's are completed annually. The completion time for Forms AA–6, AA–7 and AA–8 is estimated at 8 minutes. The completion time for Form RL–311–F is estimated at 10 minutes.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to Ronald.Hodapp@RRB.GOV. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–16470 Filed 8–18–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52256; File No. SR–CBOE–2005–56]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendments No. 1 and 2 Thereto To Amend CBOE Rule 8.7 To Extend for an Additional Six Months Its Pilot Program Pertaining to Market-Maker Quote Sizes

August 15, 2005.

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 15, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 29, 2005, CBOE submitted Amendment No. 1 to the proposed rule change.[3] On August 10, 2005, CBOE submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 8.7 to extend for an additional six months its pilot program pertaining to market-maker quote sizes. The text of the proposed rule change is available on CBOE's Web site at *http://www.CBOE.com*, at CBOE'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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CBOE replaced the original rule filing in its entirety.

[4] In Amendment No. 2, CBOE revised the text of the proposed rule change to be consistent with its current rule in order to accurately reflect the proposed rule change.

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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

On August 17, 2004, the Commission approved, on a one-year pilot basis, an exception to CBOE Rule 8.7, pertaining to the general quoting obligations of Market-Makers in option classes traded on CBOE's Hybrid Trading System (''Pilot Program'').[5] The Pilot Program allows Market-Makers to submit an undecremented electronic quotation of a size as low as 1-contract (''1-up'') when the underlying primary market for the option disseminates a 1-up market (*i.e.*, a market that reflects a quotation for 100 shares of the underlying security). The ability to quote 1-up is expressly conditioned on the process being automated; in other words, a Market-Maker may not manually adjust his quotes to reflect a 1-up size quote.

CBOE believes that the Pilot Program has been effective in serving the original purpose of the rule filing. Specifically, the purpose of the Pilot Program was to address the fact that Market-Makers may be subject to heightened and possibly inappropriate levels of risk due to their obligation to maintain electronic two-sided quotes for at least 10-contracts, whereas there is no restriction on the stock specialist's ability to disseminate a 1-up market. Additionally, when the underlying market disseminates a 1-up quote, it substantially restricts the amount of liquidity available in that security to 100 shares on that particular side of the market, which limits a Market-Maker's ability to hedge his/her positions and increases his/her financial exposure.

CBOE requests that the Pilot Program be extended for an additional six months, until February 17, 2006, to allow CBOE time to further consider whether this Pilot Program is a useful tool for Market-Makers to manage their risks when the underlying primary market quotes 1-up. This additional time would also provide Market-Makers with the opportunity to modify their systems to quote 1-up on an automated basis.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither received or solicited written comments on the proposal.

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–CBOE–2005–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–56. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–56 and should be submitted on or before September 9, 2005.

IV. Commssion's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.[8] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 believes that extending the Pilot Program for an additional six months is necessary to provide the Commission with adequate information to evaluate the effect of the Pilot Program. The Commission notes that in approving the Pilot Program, it requested a report from CBOE based on ten months of data during the first year of the Pilot Program, to be due two months prior to expiration of the Pilot Program. The Commission received a letter from CBOE approximately one month prior to the end of the Pilot

[5] *See* Securities Exchange Act Release No. 50205 (August 17, 2004), 69 FR 51869 (August 23, 2004) (approving SR–CBOE–2003–39).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

Program. The letter from CBOE, which was based on a very limited analysis of the program, stated that in its opinion, the Pilot Program did not have any impact on CBOE's best quote and size of best quote or the quality of the CBOE market. CBOE stated in the letter that it believed that additional Market-Makers would utilize the Pilot Program if given more time to make the required systems changes.

Should the Exchange decide to propose to extend, or to obtain permanent approval of, the Pilot Program, the Commission expects to receive a more comprehensive analysis of the entire Pilot Program two months prior to the expiration of this six-month extension, so that the Commission may evaluate the effectiveness of the Pilot Program.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposed rule change, as amended, prior to the thirtieth day after the publication of notice thereof in the **Federal Register**. The Pilot Program is set to expire on August 17, 2005, and as such, to allow the Pilot Program to continue to operate pursuant to proper authority, the Commission believes it is appropriate to accelerate approval. Accordingly, the Commission finds that good cause exists, consistent with Section 6(b)(5) of the Act,[11] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change, as amended (SR–CBOE–2005–56), is hereby approved on an accelerated basis on a pilot basis, scheduled to expire on February 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4532 Filed 8–18–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52250; File No. SR–ISE–2005–34]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1, 2, and 3 Thereto Relating to Fee Changes

August 12, 2005.

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 July 12, 2005, the International Securities Exchange, Inc. (''ISE'' 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 ISE. On July 29, 2005, ISE filed Amendment No. 1 to the proposed rule change.[3] On August 10, 2005, ISE filed Amendment No. 2 to the proposed rule change.[4] On August 11, 2005, ISE filed Amendment No. 3 to the proposed rule change.[5] The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under section 19(b)(3)(A)(ii) of the Act,[6] and Rule 19b–4(f)(2) thereunder,[7] which renders the proposal 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] Amendment No. 1 made technical changes to the text of the filing, including Exhibit 5 (ISE's Schedule of Fees), to correct the name of one of the narrow-based indexes, the ISE Integrated Oil & Gas Index, and to add asterisks after the Comparison Fee section in the Schedule of Fees to indicate omitted text.

[4] Amendment No. 2 made a clarifying change to the text of the filing to indicate that options on the ISE Integrated Oil & Gas Index are not currently listed for trading on the Exchange but that the Exchange expects to list those options in the near future. ISE also made a technical change to correctly renumber all pages of Exhibit 4 and to clarify the language in Item II.

[5] Amendment No. 3 deletes ISE Integrated Oil & Gas Index from the Schedule of Fees in Exhibit 5, as well as all references to that Index in the text of the filing. Due to technical reasons, the Exchange is not currently able to list options on the ISE Integrated Oil & Gas Index. The correction to Exhibit 5 does not affect the fees for transactions in options on the three narrow-based indexes and the three broad-based indexes that are the subject of this filing.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on three narrow-based indexes and three broad-based indexes. The three narrow-based indexes are the ISE U.S. Regional Banks Index, the ISE SINdex, and the ISE Bio-Pharmaceuticals Index. The three broad-based indexes are the ISE 250 Index, the ISE 100 Index, and the ISE 50 Index. The text of the proposed rule change, as amended, is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on three narrow-based indexes and three broad-based indexes. The narrow-based indexes are the ISE U.S. Regional Banks Index (''JLO''), the ISE SINdex (''SIN''), and the ISE Bio-Pharmaceuticals Index (''RND'').[8] The three broad-based indexes are the ISE 250 Index (''IXZ''), the ISE 100 Index (''IXX''), and the ISE 50 Index (''IXK'').[9] Specifically, the

[8] The Exchange represents that the following three narrow-based indexes, the ISE U.S. Regional Banks Index, the ISE SINdex, and the ISE Bio-Pharmaceuticals Index, meet the standards of ISE Rule 2002(b), which allows the ISE to begin trading these products by filing Form 19b–4(e) at least five business days after commencement of trading these new products pursuant to Rule 19b–4(e) of the Act. The Commission notes that the ISE filed Form 19b–4(e) for these narrow-based indexes with the Commission on June 19, 2005.

[9] *See* Securities Exchange Act Release No. 51913 (June 23, 2005), 70 FR 38220 (July 1, 2005) (SR–ISE–2004–28) (order approving the trading of options on the ISE 250 Index, the ISE 100 Index, and the ISE 50 Index).

Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on JLO, SIN, RND, IXZ, IXX, and IXK.[10] The amount of the execution fee and comparison fee for products covered by this filing shall be the same for all order types on the Exchange—that is, orders for Public Customers, Market Makers, and Firm Proprietary—and shall be equal to the execution fee and comparison fee currently charged by the Exchange for Market Maker and Firm Proprietary transactions in equity options.[11] Further, since options on JLO, SIN, RND, IXZ, IXX, and IXK are not multiply-listed, the Payment for Order Flow fee shall not apply. The Exchange believes that the proposed rule change, as amended, will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)(4) of the Act,[12] which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3) of the Act[13] and Rule 19b–4(f)(2)[14] thereunder. At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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 No. SR–ISE–2005–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–34. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–34 and should be submitted on or before September 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

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BILLING CODE 8010–01–P

[10] The Exchange represents that these fees will be charged only to Exchange members.

[11] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract per side.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 19b–4(f)(2).

[15] The effective date of the original proposed rule is July 12, 2005. The effective date of Amendment No. 1 is July 29, 2005. The effective date of Amendment No. 2 is August 10, 2005. The effective date of Amendment No. 3 is August 11, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 11, 2005, the date on which the ISE submitted Amendment No. 3. *See* 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52251; File No. SR–NYSE–2005–47]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Relating to NYSE Rule 103.12 Requiring Specialists and Clerks To Record Their Time on the Trading Floor of the Exchange

August 12, 2005.

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 11, 2005, the New York Stock Exchange, Inc. (''NYSE'' 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 Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A)(iii) of the Act,[3] and paragraph (f)(6) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon receipt of this filing by the Commission.[5] On August 10, 2005, NYSE filed Amendment No. 1 to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] NYSE has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

proposed rule change.[6] On August 12, 2005, NYSE filed Amendment No. 2 to the proposed rule change.[7] 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 proposed rule change seeks to amend NYSE rules to include NYSE Rule 103.12 to require specialists and their clerks to record the time they spend on the trading floor of the Exchange (''Floor'') working in those capacities. The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE'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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of a recent settlement with the Commission,[8] the Exchange agreed to undertake certain initiatives concerning the oversight of the Floor. In one of these undertakings, the Exchange is required to develop systems to track the identity of specialists and their clerks and the times when each specialist and clerk act as such while on the Floor.

The Exchange believes that proposed NYSE Rule 103.12 will enable it to more accurately track the identity of specialists and their clerks and the times when each specialist and clerk act as such while on the Floor. The proposed rule would require that specialist member organizations make and keep, in the regular course of business, records of the times that each of the member organization's specialists and clerks work in these capacities on the Floor. The records created and maintained by the specialist member organizations must be able to be provided to the Exchange within the time frame and in a format determined by the Exchange.

In addition, while the Exchange can utilize the identification badges issued to members and member organization employees, such as clerks, working on the Floor to record the time when they enter the trading Floor, the undertaking requires more detail as to the times when specialists and clerks act as such. To facilitate the Exchange's ability to monitor specialist and clerk activity, the Exchange will install a system to capture this information electronically. This system, to be known as IDTrack, will require specialists and clerks to log in to the IDTrack system and register their presence with respect to specialty stocks in which they are working. IDTrack will provide reports and information to the Exchange's Division of Market Surveillance and to specialist firms. Accordingly, under the proposed rule the Exchange will have an independent record of the times that specialists and their clerks spend on the Floor of the Exchange working in those capacities.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[9] that an Exchange have rules that are 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.

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 written 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 for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has asked the Commission to waive the five-day pre-filing requirement and the 30-day operative delay to allow NYSE to implement the undertaking in the Administrative Proceeding with respect to the recording of time specialists and clerks spend on the Floor acting in those capacities. The Commission has decided, consistent with the protection

[6] NYSE withdrew Amendment No. 1 on August 11, 2005.

[7] In Amendment No. 2, NYSE clarified that the specialist organization as well as individual specialists and Floor clerks must comply with separate obligations under the proposed rule. NYSE also withdrew the proposed addition of NYSE Rule 103.12 to the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A,'' which the Exchange represents it will file separately at a later date.

[8] *See* Securities Exchange Act Release No. 51524 (April 12, 2005) announcing Administrative Proceeding File No. 3–11892 (the ''Administrative Proceeding'').

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on August 12, 2005, the date the NYSE filed Amendment No. 2.

of investors and the public interest, to waive the five-day pre-filing notice and 30-day operative date so that the NYSE may meet the requirement in the Administrative Proceeding that the tracking of the time specialists and clerks spend on the Floor begin on or before October 1, 2005.[13]

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–NYSE–2005–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–NYSE–2005–47. 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 office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2005–47 and should be submitted on or before September 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4533 Filed 8–18–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 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. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52255; File No. SR–NYSE–2005–54]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) To Eliminate the Requirement To Publish Pre-Opening Market Order Imbalances on Expiration Fridays

August 15, 2005.

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 July 26, 2005, the New York Stock Exchange, Inc. (''NYSE'' 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 NYSE. 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 proposed rule change seeks to amend NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) to eliminate the requirement to publish pre-opening market order imbalances on expiration Fridays.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

Market on the Close Policy and Expiration Procedures

Rule 123C

* * * * *

(6) Expiration Friday Auxiliary Procedures for the Opening

The Exchange adopted monthly auxiliary procedures for expiration days in order to integrate stock orders relating to expiring index contracts into the NYSE's opening procedures in a manner that will assure an efficient market opening in each stock as close to 9:30 a.m. as possible. An expiration day is a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices on the Exchange, as identified by a qualified clearing corporation (*e.g.*, the Options Clearing Corporation). The twelve expiration days are ''expiration Fridays'' which fall on the third Friday in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month.

Order Entry

Stock orders relating to index contracts whose settlement pricing is based upon the ''Expiration Friday's'' opening prices must be received by SuperDOT or by the specialist by 9 a.m.

- These orders may be cancelled or reduced in size. Firms cancelling these orders or reducing them in size shall prepare contemporaneously a written record describing the rationale for the change and shall preserve it as Rule 410 provides.
- Stock orders relating to index contracts whose settlement pricing is not based upon the ''Expiration Friday's'' opening prices may be entered before or after 9 a.m.

To facilitate early order entry, SuperDOT (a) will begin accepting orders at 7:30 a.m. and (b) will accept orders of 500,000 shares or less.

''Limit at the opening'' (''limit OPG'') orders are permitted, including delivery through Exchange systems.

- Ordinary limit orders may also be entered.

Order Identification

Stock orders relating to opening-price settling contracts must be identified ''OPG''.

- Firms entering these orders through SuperDOT, but unable to identify orders as ''OPG,'' may use a unique branch code or firm identifier (mnemonic) to identify these orders.
- Firms unable to identify these orders in either way, and firms not using SuperDOT, must submit a list of all these orders and related details to the NYSE Market Surveillance Division.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[Dissemination of Order Imbalances]
Applicability of Regular Opening Procedures

[On Expiration days, for any stocks having a market order imbalance of 50,000 shares or more at 9 a.m., the NYSE will disseminate the size of the order imbalance via the low-speed ticker and the news services as promptly as practicable after 9 a.m.]

Except for the auxiliary procedures described above, all stocks are subject to the regular NYSE opening procedures, including price indications where a substantial price change is anticipated. Ten minutes must elapse between a first indication and a stock's opening. However, when more than one indication is necessary, a stock may open five minutes after the last indication provided that ten minutes must have elapsed from the dissemination of the first indication.

* * * * *

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 included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE 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

NYSE Rule 123C (Market on the Close Policy and Expiration Procedures) contains requirements with respect to operation of the Exchange's market concerning market-on-close (''MOC'') and limit-on-close (''LOC'') orders as well as order entry and imbalance publication requirements for use on expiration days. An ''expiration day'' as defined in NYSE Rule 123C is ''a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices on the Exchange, as identified by a qualified clearing corporation (*e.g.*, the Options Clearing Corporation). The twelve expiration days are 'expiration Fridays' which fall on the third Friday in every month.'' On these expiration days, the Exchange has specific requirements governing the entry of orders in stocks relating to index contracts whose settlement prices are based on the opening prices on the Exchange of the stocks comprising the indices. Stock orders relating to index contracts whose settlement pricing is based upon the expiration Friday's opening prices must be received by SuperDOT® or by the specialist by 9 a.m. and must be identified as pertaining to opening-price settling contracts by placing the letters ''OPG'' on the order.

Both market and limit orders in stocks which are part of an expiring index whose settlement is based on NYSE opening prices may be entered on expiration Fridays. Market and limit orders may also be entered with respect to stocks that are not part of an expiring index whose pricing is based on NYSE opening prices. Under NYSE Rule 123C(6), the Exchange publishes informational order imbalances, as promptly as possible after 9 a.m., only with respect to the imbalance of buy and sell market orders, and does not include buy and sell limit orders entered up to that time for execution at the opening. On occasion, this practice of publishing only pre-opening market order imbalances has prompted observations from some market participants that this may provide misleading information, since the imbalances disseminated may not show the true imbalance situation in a stock, especially in those stocks that are part of an expiring index whose settlement is based on NYSE opening prices, since limit orders are not included in the imbalance publication.

To address these concerns, the Exchange proposes to eliminate the publication of pre-opening market order imbalances on expiration Fridays. The Exchange believes that, based on input from its market participants, the publication of only market order imbalances does not provide useful information, especially with respect to those stocks which are part of an expiring index whose settlement is based on NYSE opening prices on one of those days. To calculate an imbalance using pre-opening limit orders, reference prices at various points would have to be used to determine whether the limit order would be marketable, that is, whether, based on the reference price, the limit order could be executed. The Exchange's systems are not able to show pre-opening limit order imbalances in this manner and, thus, the Exchange cannot expand the imbalance publications to include limit orders.

The Exchange will, however, continue to utilize its pre-opening procedures with respect to price indications in situations where the opening price would be affected by an imbalance of buy and sell orders, both market and limit orders, in a security. These procedures, as set forth in NYSE Rule 123D (Openings and Halts in Trading), provide ample notification to the marketplace through multiple price indications if necessary under the supervision of a Floor Official. In addition, Intermarket Trading System procedures contained in NYSE Rule 15 (ITS and Pre-Opening Applications) require pre-opening price notifications if the opening price of a stock is anticipated to be more than .10 of a point from a composite last sale under $15 or more than .25 of a point from a composite last sale of $15 or higher. These procedures set forth in NYSE Rules 123D and 15 have proven effective in providing adequate and useful information to the marketplace in situations involving price changes based on order imbalances and the Exchange believes they will continue to do so.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [3] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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 written comments on the proposed rule change.

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 Exchange consents, the Commission shall:

[3] 15 U.S.C. 78f(b)(5).

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2005–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–54. 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 Commissions 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. 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–NYSE–2005–54 and should be submitted on or before September 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4535 Filed 8–18–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52254; File No. SR–Phlx–2005–36]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Phlx Rule 1023

August 15, 2005.

I. Introduction

On May 19, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 proposal to amend Phlx Rule 1023, ''Specialist's Transactions with Listed Company.'' The proposed rule change was published for comment in the **Federal Register** on July 7, 2005.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Phlx Rule 1023(a) currently prohibits a specialist from effecting any business transaction with a company or any officer, director, or 10% shareholder of a company underlying an option in which the specialist is registered. The Phlx proposes to amend Phlx Rule 1023(a) to exclude from its restriction on an option specialist's business transactions with the issuer of the underlying stock and related persons business transactions in goods and services on terms generally available to the public. The Phlx believes that the proposed exception will not provide the option specialist with access to material non-public information concerning the issuer or give rise to a control relationship between the issuer and the specialist.

III. Discussion

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)(5) of the Act,[5] 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.

The Commission believes that the proposal will ease the restriction in Phlx Rule 1023(a) on a specialist's business transactions with the issuer of the stock underlying an option in which the specialist is registered and related persons without providing the specialist with access to material non-public information regarding the issuer or giving rise to a control relationship between the issuer and the specialist. In addition, the Commission notes that Phlx Rule 1023(a), as amended, is substantially similar to Chicago Board Options Exchange Rule (''CBOE'') 8.91(b).[6]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2005–36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4534 Filed 8–18–05; 8:45 am]

BILLING CODE 8010–01–P

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51928 (June 28, 2005), 70 FR 39351.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] CBOE Rule 8.9(b) provides, in part, that ''Neither a DPM for an equity option, nor any member affiliated with the DPM, shall engage in any material business transaction with the issuer of the security that underlies the equity option or with any officer, director, or 10% shareholder of the issuer of the security * * *. For purposes of this paragraph (b), a material business transaction shall be deemed to be a transaction which is material in value either to the issuer or the DPM, would provide access to material non-public information relating to the issuer, or would give rise to a control relationship between the issuer and the DPM. Notwithstanding the foregoing, the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available shall not be deemed a material business transaction for the purposes of this paragraph (b).''

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10160 and #10161]

California Disaster #CA–00012

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 08/10/2005.

Incident: Severe Storms, Flooding, Landslides, and Mud and Debris Flows.

Incident Period: 02/12/2005 through 02/24/2005.

Effective Date: 08/10/2005.

Physical Loan Application Deadline Date: 10/11/2005.

EIDL Loan Application Deadline Date: 05/10/2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Disaster Area Office 3, 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, 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: Los Angeles; Orange.

Contiguous Counties: California: Kern; Riverside; San Bernardino; San Diego; Ventura.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.875.
Homeowners Without Credit Available Elsewhere	2.937.
Businesses With Credit Available Elsewhere	6.000.
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000.
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.750.
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000.

The number assigned to this disaster for physical damage is 10160 B and for economic injury is 10161 0. The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Dated: August 10, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–16419 Filed 8–18–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10162]

UTAH Disaster #UT–00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for public assistance only for the State of Utah (FEMA–1598–DR), dated 08/01/2005.

Incident: Flooding and Landslides.

Incident Period: 04/28/2005 through 06/29/2005.

DATES: *Effective Date:* 08/01/2005.

Physical Loan Application Deadline Date: 09/30/2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 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, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/01/2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster: Primary Counties: Beaver, Box Elder, Iron, Sevier, Tooele, Uintah, Wasatch, Uintah and Ouray Indian Reservation.

The Interest Rates are:

	Percent
Other (including non-profit organizations) with credit available elsewhere	4.750.
Businesses and non-profit organizations without credit available elsewhere	4.000.

The number assigned to this disaster for physical damage is 10162.

(Catalog of Federal Domestic Assistance Number 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–16418 Filed 8–18–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Advisory Board, Small Business Development Centers; Public Meeting

The U.S. Small Business Administration, National Advisory Board of the Office of Small Business Development Centers, will be hosting a public meeting via conference call to discuss such matters that may be presented by members, the staff of the U.S. Small Business Administration, or interested others. The conference will take place on Thursday, August 25, 2005 at 11 a.m. eastern standard time.

Anyone wishing to participate or make 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.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–16420 Filed 8–18–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Final Environmental Impact Statement (FEIS) Containing a Final Air Quality General Conformity Determination (FGCD), (Preliminary) Final Section 106 Historic Resources Report, and Virginia Coastal Zone Consistency Determination: Notice of EPA 30-day Hold Period and Notice of Comment Period for Proposed New Runways and Associated Development at Washington Dulles International Airport, Chantilly, VA

AGENCY: Federal Aviation Administration (FAA), DOT. The U.S. Army Corps of Engineers (USACE) is a cooperating Federal agency, having jurisdiction by law because the proposed Federal action has the potential for significant wetland impacts.

ACTION: Notice of availability, notice of EPA 30-day hold period, notice of comment period.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Final Environmental Impact Statement (FEIS)—Proposed New Runways and Associated Development at Washington Dulles International Airport, has been prepared and is available for public review and comment. The FEIS incorporates a Final Air Quality General Conformity Determination (FGCD), (Preliminary) Final Section 106 Historic Resources Report and a Virginia Coastal Zone Consistency Determination. Written requests for the FEIS and written comments on the FEIS and related documents can be submitted to the individual listed in the section **FOR FURTHER INFORMATION CONTACT**. The EPA 30-day Hold Period and FEIS comment period will commence on August 19, 2005, and will close on September 19, 2005.

FEIS Availability: Copies of the FEIS and related documents may be viewed during regular business hours at the following locations:

1. Centreville Regional Library, 14200 St. Germaine Drive, Centreville, VA.
2. Chantilly Regional Library, 4000 Stringfellow Road, Chantilly, VA.
3. Great Falls Library, 9830 Georgetown Pike, Great Falls, VA.
4. Herndon Fortnightly Library, 768 Center Street, Herndon, VA.
5. Reston Regional Library, 11925 Bowman Towne Drive, Reston, VA.
6. Fairfax City Regional Library, 3915 Chain Bridge Road, Fairfax, VA.
7. Ashburn Library, 43316 Hay Road, Ashburn, VA.
8. Rust Library, 380 Old Waterford Road, Leesburg, VA.
9. Middleburg Library, 101 Reed Street, Middleburg, VA.
10. Purcellville Library, 220 E. Main Street, Purcellville, VA.
11. Sterling Library, 120 Enterprise Street, Sterling, VA.
12. Eastern Loudoun Regional Library, 21030 Whitfield Place, Sterling, VA.
13. Tysons-Pimmit Regional Library, 7584 Leesburg Pike, Falls Church, VA.

A limited number of copies of the FEIS and related documents will also be available for review by appointment only at the following FAA/Metropolitan Washington Airports Authority (MWAA) Offices. Please call to make arrangements for viewing: Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA, (703) 661–1368; Washington Dulles International Airport, Airport Managers Office, Main Terminal Baggage Claim Level, Dulles, VA, (703) 572–2710. An Executive Summary will be available August 13, 2005 on Dulles Airport's Web site at *http://www.mwaa.com/dulles/EnvironmentalStudies/RunwaysEIS.htm*.

FOR FURTHER INFORMATION CONTACT: Joseph Delia, Project Manager, Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA. Mr. Delia can be contacted at (703) 661–1358.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) is issuing this Notice of Availability to advise the public that a Final Environmental Impact Statement (FEIS) containing a Final Air Quality General Conformity Determination (FGCD), (Preliminary) Final Section 106 Historic Resources Report and a Virginia Coastal Zone Consistency Determination will be available for public review beginning August 11, 2005. The FEIS details the proposed development of two new runways, terminal facilities, and related facilities at Washington Dulles International Airport (IAD), Dulles, Virginia.

The U.S. Army Corps of Engineers (USACE) is a cooperating Federal agency, having jurisdiction by law because the proposed Federal action has the potential for significant wetland impacts.

The FEIS presents the purpose and need for the proposed project, a comprehensive analysis of the alternatives to the proposed project, including the no-action alternative and potential environmental impacts associated with the proposed development of two new air carrier runways and related improvements at IAD. The FEIS also identifies the FAA's Preferred Alternative (Build Alternative 3) and sets forth the Mitigation Program for the Preferred Alternative that will be implemented by the Metropolitan Washington Airports Authority (MWAA) to off-set unavoidable environmental impacts.

In accordance with section 176(c) of the Federal Clean Air Act, FAA has assessed whether the air emissions that would result from FAA's action in approving the proposed projects conform with the State Implementation Plan (SIP). The results of this assessment indicate that the Preferred Alternative has demonstrated conformity with the SIP. This assessment is contained in the Air Quality General Conformity Determination.

Pursuant to the National Historic Preservation Act of 1966, as amended, including Executive Order 11593, Protection and Enhancement of the Cultural Environment, FAA has assessed whether its action in approving the proposed project would result in significant impact to Historic and Archaeological Resources. The results of this assessment indicate that the Preferred Alternative would result in impacts to resources that are listed in, and eligible for, listing in the National Register of Historic Places. FAA is consulting with the Virginia State Historic Preservation Office (SHPO) concerning the effects assessment and the execution of a project specific Memorandum of Agreement (MOA) that will identify treatment of the affected resources.

In accordance with the Coastal Zone Management Act of 1972, as amended, the Preferred Alternative was evaluated for consistency with the Virginia Coastal Program. FAA's evaluation determined that the Preferred Alternative is consistent with the Virginia Coastal Zone Program.

In accordance with Executive Order 11988, Floodplain Management and Order DOT 5650.2, Floodplain Management and Protection, FAA evaluated whether the proposed project would impact base floodplain based on a 100-year flood. The results of this assessment indicate that the Preferred Alternative would result in unavoidable impacts to the base floodplain and that all available measures to minimize harm will be included in the project design. FAA's analysis has also determined that the base floodplain encroachment does not constitute a ''significant'' encroachment. Measures to mitigate base floodplain impact are included in the FEIS. The public has been kept informed of the base floodplain encroachment through FAA's ongoing Public Involvement Program.

Comments on the FEIS should be as specific as possible. Matters that have already been raised with specificity during the DEIS comment period may not be considered again by FAA if raised at this point in the decisionmaking process. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them in the Record of Decision (ROD).

Comments from interested parties on the FEIS and related documents must be submitted in writing to the FAA at the address listed in the section entitled **FOR FURTHER INFORMATION CONTACT**. The

comment period will close on September 19, 2005.

Issued in Washington, DC on August 9, 2005.

Terry Page,

Manager, Washington Airports District Office, Federal Aviation Administration.

[FR Doc. 05–16153 Filed 8–18–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–21711]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 40 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before September 19, 2005.

ADDRESSES: You may submit comments identified by any of the following methods. Please identify your comments by the DOT DMS Docket Number FMCSA–2005–21711.

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: 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.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or 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.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Public Participation:* The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. The 40 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

1. Roy L. Allen

Mr. Allen, age 34, has amblyopia in his left eye. His visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2005, his optometrist noted, ''This patient has sufficient vision to perform the driving tasks to operate a commercial vehicle with the above acuities.'' Mr. Allen submitted that he has driven straight trucks for 6 years, accumulating 124,000 miles. He holds a Class C driver's license from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

2. Calvin D. Atwood

Mr. Atwood, 60, has a cataract in his right eye due to trauma at age 9. His best-corrected visual acuity in the right eye is light perception and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''I certify in my professional opinion Calvin Atwood has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Atwood submitted that he has driven straight trucks for 4 years, accumulating 87,000 miles, and tractor-trailer combinations for 7 years, accumulating 223,000 miles. He holds a Class A commercial driver's license (CDL) from New Mexico. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

3. Gregory W. Babington

Mr. Babington, 26, has had a cataract in his right eye since birth. The visual acuity in his right eye is hand motions and in the left, 20/20. His ophthalmologist examined him in 2005 and noted, ''It is my professional opinion that Greg has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Babington reported that he has driven straight trucks and tractor-trailer combinations for 3 years, accumulating 6,000 miles in the former and 225,000 in the latter. He holds a Class A CDL from Massachusetts. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

4. Lennie D. Baker, Jr.

Mr. Baker, 26, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/400 and in the left, 20/20. His optometrist examined him in 2004 and certified, ''In my medical opinion, you have sufficient

vision to perform driving tasks for a commercial vehicle.'' Mr. Baker reported that he has driven tractor-trailer combinations for 5 years, accumulating 60,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows one crash and two convictions for moving violations in a CMV. He exceeded the speed limit by 14 mph in one instance and 15 mph in another instance. The crash occurred when, according to the police report, Mr. Baker rear-ended a vehicle that entered his lane. The other driver was cited; Mr. Baker was not cited.

5. John E. Breslin

Mr. Breslin, 39, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/120. Following an examination in 2004, his optometrist noted, ''I feel that John presents adequate vision for operating a commercial vehicle safely.'' Mr. Breslin submitted that he has driven straight trucks and tractor-trailer combinations for 19 years, accumulating 285,000 miles in the former and 1.1 million miles in the latter. He holds a Class A CDL from Nevada. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

6. Arturo Cardozo

Mr. Cardozo, 38, has had a prosthesis in his left eye for 20 years due to injury. His visual acuity in the right eye is 20/20. Following an examination in 2005, his ophthalmologist noted, ''In my opinion his vision is sufficient to operate a commercial vehicle, which his driving record will also confirm.'' Mr. Cardozo submitted that he has driven straight trucks for 2 years, accumulating 27,000 miles, and tractor-trailer combinations for 7 years, accumulating 273,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

7. William P. Doolittle

Mr. Doolittle, 46, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is count fingers and in the left, 20/15. His optometrist examined him in 2005 and certified, ''It is my opinion that Mr. Doolittle does have sufficient vision to perform the driving tasks required to operate a CMV.'' Mr. Doolittle submitted that he has driven straight trucks and tractor-trailer combinations for 8 years, accumulating 576,000 miles in each. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

8. Steve R. Felks

Mr. Felks, 46, has had decreased vision in his left eye of unknown etiology since birth. His visual acuity in the right eye is 20/20 and in the left, form perception. Following an examination in 2005, his optometrist noted, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Felks submitted that he has driven straight trucks for 12 years, accumulating 804,000 miles. He holds a Class DM driver's license from Alabama. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

9. William M. Gales, III

Mr. Gales, 49, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/80. His optometrist examined him in 2004 and noted, ''In my opinion as an optometrist, Mr. Gales' vision meets the requirement for operating a vehicle, commercial or otherwise, at this time.'' Mr. Gales submitted that he has driven straight trucks for 18 years, accumulating 126,000 miles, and buses for 3 years, accumulating 7,000 miles. He holds a Class B CDL from Maryland. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

10. Jonathan M. Gentry

Mr. Gentry, 32, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/100 and in the left, 20/20. Following an examination in 2005, his optometrist certified, ''In my professional opinion, the patient's vision is sufficient to operate a commercial vehicle.'' Mr. Gentry submitted that he has driven straight trucks for 7 years, accumulating 336,000 miles. He holds a Class D driver's license from Tennessee. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

11. John N. Guilford

Mr. Guilford, 40, has macular scars in his left eye resulting from a childhood injury. His best-corrected visual acuity in the right eye is 20/25 and in the left, 20/400. Following an examination in 2004, his optometrist certified, ''It is my medical opinion that Mr. Guilford's vision is stable and that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Guilford submitted that he has driven tractor-trailer combinations for 14 years, accumulating 1.1 million miles. He holds a Class AM CDL from Alabama. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

12. Benny D. Hatton, Jr.

Mr. Hatton, 35, has had a macular scar in his right eye since childhood. The visual acuity in his right eye is 20/300 and in the left, 20/20. His ophthalmologist examined him in 2004 and certified, ''In my opinion, Benny Hatton has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hatton reported that he has driven straight trucks for 11 years, accumulating 550,000 miles. He holds a Class BM CDL from New York. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

13. Robert W. Healey, Jr.

Mr. Healey, 50, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/400 and in the left, 20/20. His optometrist examined him in 2005 and stated, ''In my opinion, he has sufficient vision to operate a commercial vehicle.'' Mr. Healey reported that he has driven tractor-trailer combinations for 31 years, accumulating 2.3 million miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

14. Nathaniel H. Herbert, Jr.

Mr. Herbert, 49, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is count fingers and in the left, 20/20. Following an examination in 2004, his ophthalmologist noted, ''Based on his eye examination and his visual field testing, the patient, in my medical opinion, has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Herbert submitted that he has driven tractor-trailer combinations for 24 years, accumulating 3.0 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

15. Thomas D. Lambert

Mr. Lambert, 33, had his left eye surgically removed in 1994 due to trauma. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2005, his optometrist noted, ''It is my medical opinion that this patient has sufficient vision to perform the driving tasks required to

operate a commercial vehicle and I so certify.'' Mr. Lambert submitted that he has driven straight trucks and tractor-trailer combinations for 12 years, accumulating 360,000 miles in the former and 480,000 miles in the latter. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

16. Thomas (Tom) W. Markham

Mr. Markham, 48, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/20. Following an examination in 2004, his optometrist noted, ''Based on this examination, it is my medical opinion that Tom Markham has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Markham submitted that he has driven straight trucks for 5 years accumulating 250,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.5 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

17. Eugene P. Martin

Mr. Martin, 45, has had a macular hole in his right eye for 20 years. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/20. His optometrist examined him in 2005 and noted, ''Mr. Martin has sufficient vision to perform commercial driving tasks.'' Mr. Martin reported that he has driven straight trucks for 25 years, accumulating 650,000 miles, and tractor-trailer combinations for one year, accumulating 18,000 miles. He holds a Class A CDL from New Hampshire. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

18. Raul Martinez

Mr. Martinez, 48, had his right eye surgically removed 5 years ago due to a tumor. His best-corrected visual acuity in the left eye is 20/20. Following an examination in 2004, his optometrist noted, ''In my opinion Mr. Martinez has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Martinez submitted that he has driven straight trucks and tractor-trailer combinations for 20 years, accumulating 520,000 miles in the former and 500,000 miles in the latter. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

19. Joseph L. Mast

Mr. Mast, 53, lost the vision in his right eye due to trauma in 1973. The best-corrected visual acuity in his left eye is 20/15. His optometrist examined him in 2004 and stated, ''His vision is adequate for safe operation of a commercial vehicle.'' Mr. Mast reported that he has driven straight trucks for 15 years, accumulating 202,000 miles, tractor-trailer combinations for 17 years, accumulating 1.0 million miles, and buses for 3 years, accumulating 1,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

20. Randy G. McCloud

Mr. McCloud, 50, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/70. His optometrist examined him in 2005 and stated, ''In my professional experience, I believe that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. McCloud submitted that he has driven straight trucks for 10 years, accumulating 260,000 miles. He holds a Class D driver's license from Minnesota. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

21. Richard L. McEwen

Mr. McEwen, 69, has been blind in his right eye since 1996 due to trauma. His visual acuity in the left eye is 20/30. Following an examination in 2005, his ophthalmologist noted, ''I feel he has adequate function to safely continue commercial driving.'' Mr. McEwen submitted that he has driven tractor-trailer combinations for 28 years, accumulating 5.6 million miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

22. David McKinney

Mr. McKinney, 40, has been blind in his right eye since age 3 due to injury. His best-corrected visual acuity in the left eye is 20/15. Following an examination in 2005, his optometrist noted, ''In my opinion, since this has been a life-long deficiency, you have made good adaptations, and your vision should be sufficient to operate cars and commercial trucks.'' Mr. McKinney submitted that he has driven straight trucks for 7 years, accumulating 122,000 miles, and tractor-trailer combinations for 5 years, accumulating 62,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 11 mph.

23. Ralph L. Means

Mr. Means, 69, had a vascular occlusion in his right eye in 1996. His best-corrected visual acuity in the right eye is count fingers and in the left, 20/20. Following an examination in 2004, his optometrist noted, ''It is my opinion that Mr. Means has sufficient vision to perform driving tasks required for operating a commercial vehicle.'' Mr. Means submitted that he has driven straight trucks for 5 years, accumulating 160,000 miles, and tractor-trailer combinations for 45 years, accumulating 2.8 million miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

24. Kevin L. Moody

Mr. Moody, 41, has macular scarring in his left eye due to an infection in 1992. The visual acuity in his right eye is 20/20 and in the left, 20/60. His optometrist examined him in 2005 and noted, ''It is my medical opinion the applicant has sufficient vision to safely and efficiently perform the driving tasks required to operate a commercial vehicle.'' Mr. Moody reported that he has driven straight trucks for 1 year, accumulating 1,000 miles, and tractor-trailer combinations for 18 years, accumulating 1.0 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 10 mph.

25. Woody M. Moore

Mr. Moore, 25, is blind in his right eye due to retinoblastoma at age 2. The best-corrected visual acuity in his left eye is 20/20. His optometrist examined him in 2005 and certified, ''In my professional opinion, Woody has sufficient vision to operate a commercial vehicle.'' Mr. Moore reported that he has driven straight trucks for 3 years, accumulating 75,000 miles. He holds a Class D driver's license from Florida. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

26. William G. Mote

Mr. Mote, 58, had a choroidal neovascularization in his left eye in 1998. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/80. Following an examination in 2004,

his ophthalmologist noted, ''It appears that he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Mote reported that he has driven straight trucks for 18 years, accumulating 1.0 million miles. He holds a Class D driver's license from Ohio. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

27. Charles W. Mullenix

Mr. Mullenix, 61, sustained an injury to his left eye at age 11. His best-corrected visual acuity in the right eye is 20/20 and in the left, light perception. Following an examination in 2005, his optometrist noted, ''In my opinion, Mr. Wayne Mullenix has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Mullenix reported that he has driven straight trucks and tractor-trailer combinations for 44 years, accumulating 440,000 miles in each. He holds a Class AM CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

28. James R. Murphy

Mr. Murphy, 39, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/20. His optometrist examined him in 2005 and certified, ''It is my medical opinion that Mr. Murphy is able to perform the driving tasks required to operate a commercial vehicle.'' Mr. Murphy reported that he has driven straight trucks for 8 years, accumulating 8,000 miles, and tractor-trailer combinations for 21 years, accumulating 610,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

29. Kenneth R. Murphy

Mr. Murphy, 44, has a corneal scar in his left eye due to an injury at age 5. His visual acuity in the right eye is 20/20 and in the left, 20/60. Following an examination in 2004, his optometrist noted, ''In my opinion, Ken is able to operate a commercial vehicle without any concerns or worries. His excellent peripheral vision in team use of his eyes gives me no concerns regarding the safe and efficient operation of a commercial vehicle.'' Mr. Murphy reported that he has driven straight trucks for 9 years, accumulating 720,000 miles, and tractor-trailer combinations for 5 years, accumulating 161,000 miles. He holds a Class A CDL from the State of Washington. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

30. Gary S. Partridge

Mr. Partridge, 54, lost the vision in his right eye due to an injury at age 10. The visual acuity in his left eye is 20/20. Following an examination in 2005, his optometrist stated, ''In my professional medical opinion, Mr. Partridge's vision is stable and he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Partridge submitted that he has driven straight trucks for 2 years, accumulating 100,000 miles, and tractor-trailer combinations for 7 years, accumulating 700,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

31. Nathan (Nate) D. Peterson

Mr. Peterson, 27, is blind in his right eye due to trauma in 2001. The visual acuity in his left eye is 20/15. Following an examination in 2005, his ophthalmologist stated, ''In my opinion, Nate has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Peterson submitted that he has driven straight trucks and tractor-trailer combinations for 4 years, accumulating 80,000 miles in the former and 120,000 miles in the latter. He holds a Class A CDL from Nebraska. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

32. John N. Poland

Mr. Poland, 52, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2005, his optometrist noted, ''John has been a professional truck driver his whole life. I do not feel his condition should impair his driving abilities in any way, shape, or form, since this condition is not new to him.'' Mr. Poland reported that he has driven tractor-trailer combinations for 26 years, accumulating 1.8 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

33. Neal A. Richard

Mr. Richard, 46, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/60. His optometrist examined him in 2004 and certified, ''With glasses Neal Richard's vision is sufficient to perform driving tasks to operate a commercial vehicle.'' Mr. Richard submitted that he has driven straight trucks for 6 years, accumulating 132,000 miles, and buses for 2 years, accumulating 1,200 miles. He holds a Class D chauffeur's license from Louisiana. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. According to the police report, Mr. Richard struck a vehicle after its driver was unable to stop at a stop sign due to defective brakes. Neither driver was cited in relation to the crash.

34. Chris A. Ritenour

Mr. Ritenour, 32, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/50. Following an examination in 2004, his optometrist noted, ''To the best of my knowledge, I believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ritenour reported that he has driven straight trucks for 2 years, accumulating 60,000 miles, and tractor-trailer combinations for 7 years, accumulating 350,000 miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

35. Brent L. Seaux

Mr. Seaux, 33, experienced atrophy of his left eye due to trauma in 1996. His visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2005, his ophthalmologist noted, ''We have found that Mr. Seaux has sufficient vision to drive a commercial vehicle.'' Mr. Seaux reported that he has driven tractor-trailer combinations for 11 years, accumulating 962,000 miles. He holds a Class D driver's license from Louisiana, but at the time of his application he held a Class A CDL. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 18 mph.

36. Gerald M. Smith

Mr. Smith, 59, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/20. His ophthalmologist examined him in 2005 and certified, ''That patient has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Smith reported that he has driven tractor-trailer combinations for 8 years, accumulating 800,000 miles. He holds a chauffeur's license from Indiana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

37. James T. Smith

Mr. Smith, 60, lost the vision in his left eye due to a retinal detachment 11 years ago. The best-corrected visual acuity in his right eye is 20/20. His optometrist examined him in 2004 and noted, ''I certify that this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Smith submitted that he has driven straight trucks for 35 years, accumulating 35,000 miles, and tractor-trailer combinations for 15 years, accumulating 180,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

38. Nicholas J. Turpin

Mr. Turpin, 49, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/70. Following an examination in 2005, his optometrist noted, ''Mr. Turpin has complete visual function for operation of a commercial vehicle.'' Mr. Turpin reported that he has driven tractor-trailer combinations for 13 years, accumulating 1.3 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

39. Gary M. Wolff

Mr. Wolff, 54, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/100 and in the left, 20/20. Following an examination in 2004, his ophthalmologist noted, ''In my medical opinion, Gary Wolff has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wolff reported that he has driven tractor-trailer combinations for 15 years, accumulating 984,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

40. George R. Zenor

Mr. Zenor, 63, experienced histoplasmosis in his right eye in 1986. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/15. His ophthalmologist examined him in 2005 and stated, ''I see no contraindications from a visual standpoint to Mr. Zenor's ability to operate a commercial vehicle.'' Mr. Zenor reported that he has driven straight trucks for 10 years, accumulating 350,000 miles, and tractor-trailer combinations for 35 years, accumulating 4.8 million miles. He holds a Class AM CDL from Iowa. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: August 15, 2005.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 05–16461 Filed 8–18–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34727]

Indiana Eastern Railroad, LLC—Lease and Operation Exemption—CSX Transportation, Inc.

Indiana Eastern Railroad, LLC (IERR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate, pursuant to a Land and Track Lease Agreement with CSX Transportation, Inc. (CSXT), to operate 43.0 miles of rail line. The line of railroad extends between milepost No. CI 61.9 at or near Richmond, IN, and milepost No. CI 18.9 at or near Fernald, OH, including spur, industrial, team, switching, and side track, in Wayne, Union, and Franklin Counties, IN, and in Butler and Hamilton Counties, OH.[1]

IERR certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier, and will not exceed $5 million.

The transaction is scheduled to be consummated on August 26, 2005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34727, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Andrew P. Goldstein, McCarthy, Sweeney & Harkaway, P.C., Suite 600, 2175 K Street, NW., Washington, DC 20037.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 12, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–16379 Filed 8–18–05; 8:45 am]

BILLING CODE 4915–01–P

[1] CSXT will retain overhead trackage rights until December 31, 2005, between Cottage Grove, IN, milepost No. CI 45.0, and Fernald, milepost No. CI 18.9, in order to conclude a contract with the U.S. Department of Energy to transport contaminated dirt.

Corrections

Federal Register

Vol. 70, No. 160

Friday, August 19, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51742; File No. SR–NASD–2005–030]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Proposed Uniform Branch Office Registration Form (''Form BR'') and Amendments to the Uniform Application for Securities Industry Registration or Transfer (''Form U4 '') and the Uniform Termination Notice for Securities Industry Registration (''Form U5'')

Correction

In notice document E5–2810 beginning on page 32386 in the issue of Thursday, June 2, 2005 make the following correction:

On page 32387, in the first column, in the footnotes, the first paragraph of footnote 3 should read: ''[3]Currently, broker-dealers register or report branch offices or other business locations on Schedule E of the Form BD. NYSE member firms are required to submit the NYSE Branch Office Application to register a branch office with the NYSE. In addition, Connecticut, Florida, Nevada and Vermont have separate branch office forms that request similar information for firms seeking to register a branch office in those states; moreover, more than 20 states require broker-dealers to submit a ''notice filing'' when a firm opens or closes a branch office.''.

[FR Doc. Z5–2810 Filed 8–18–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
August 19, 2005

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; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600, and 635

[Docket No. 050805217-5217-01; 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: Proposed rule; availability of the Fishery Management Plan (FMP); petition for rulemaking; proposed rule withdrawal; request for comments; public hearings.

SUMMARY: NMFS proposes to consolidate the Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks and the FMP for Atlantic Billfish, to change certain FMP management measures, to adjust regulatory framework measures, and to continue the process for updating essential fish habitat. The alternatives described in this proposed rule could impact fishermen and dealers for all Atlantic highly migratory species (HMS) fisheries. The range of alternatives examined includes those to: establish mandatory workshops for fishermen and dealers; consider methods of modifying and establishing time/area closures; address rebuilding and overfishing of northern albacore tuna, finetooth sharks, and 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 back to a calendar year; authorize additional fishing gears; and clarify numerous existing regulations, particularly in 50 CFR part 635. This proposed rule also announces the receipt of a petition for rulemaking regarding bluefin tuna and describes the analyses conducted as part of this rulemaking, in response to the petition, to consider closure areas in the Gulf of Mexico. In this proposed rule, NMFS also formally withdraws a proposed rule published September 17, 2003, to establish an annual domestic recreational landing limit of 250 Atlantic blue and white marlin and other measures.

DATES: Comments on this proposed rule and draft FMP must be received no later than 5 p.m. on October 18, 2005.

Public hearings on this proposed rule and draft FMP will be held in September and October 2005. For specific dates and times see the **SUPPLEMENTARY INFORMATION** section of this document.

The September 17, 2003, proposed rule (68 FR 54410) is withdrawn as of August 18, 2005.

ADDRESSES: The public hearings will be held in Port Aransas, TX; New Orleans, LA; Orange Beach, AL; Panama City, Madeira Beach, Key West, Fort Lauderdale, Fort Pierce, and Atlantic Beach, FL; Charleston, SC; Manteo, NC; Virginia Beach, VA; Ocean City, MD; Cape May and Barnegat Light, NJ; Islip and Montauk, NY; Narragansett, RI; New Bedford and Gloucester, MA; Portland, ME; St. Thomas, USVI; and San Juan and Mayaguez, PR. For specific locations see the **SUPPLEMENTARY INFORMATION** of this document.

Written comments on the proposed rule and draft HMS FMP may be submitted to Karyl Brewster-Geisz, Highly Migratory Species Management Division:

- Email: *SF1.060303D@noaa.gov*. Include in the subject line the following identifier: Atlantic HMS FMP.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Draft HMS FMP.''
- Fax: 301–427–2592.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.

Copies of the draft 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 Heather Stirratt at 301–713–2347 or fax 301–713–1917; Russ 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:

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 FMP for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, and the FMP for Atlantic Billfish, finalized in 1988, are implemented by regulations at 50 CFR part 635.

Since the 1999 final rule (May 28, 1999; 64 FR 29090) that consolidated Atlantic HMS regulations and implemented the 1999 Atlantic Tunas, Swordfish, and Shark FMP and Amendment 1 to the Atlantic Billfish FMP, a number of management issues have arisen that require further reconsideration or action. Many of these actions are linked to each other and are best analyzed in conjunction with other actions. This proposed rule and draft HMS FMP cover many of these issues and topics including: minimizing bycatch or bycatch mortality, rebuilding overfished fisheries, and modifying existing management strategies. Some of the alternatives proposed relate to regulations under the Magnuson-Stevens Act or the Endangered Species Act (ESA). Other proposed actions would improve the clarity and effectiveness of existing regulations or the process to be followed when taking action, consistent with the FMPs. Some of the actions proposed in this rule would amend the FMP while other actions would adjust the management measures without amending the FMP. The need for each action is described later in this document with the analyses of each alternative.

NMFS announced its intent to conduct an Environmental Impact Statement (EIS) amending the two current fishery management plans 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. During this time, NMFS also presented the Issues and Options Paper to the New England, Mid-Atlantic, and Gulf of Mexico Fishery Management Councils and the Atlantic States Marine Fisheries Commission. 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 HMS FMP.

In February 2005, NMFS released the combined Predraft to the Consolidated HMS FMP and annual Stock Assessment and Fishery Evaluation (SAFE) Report. NMFS presented the Predraft document to all five Atlantic Fishery Management Councils, both the Atlantic and Gulf of Mexico States Marine Fisheries Commissions, and to

the HMS and Billfish Advisory Panels. 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**).

This proposed rule and the accompanying draft HMS FMP are the culmination of the analyses of the comments received on the Issues and Options paper and the Predraft document. In addition, the draft HMS FMP continues the process to conduct a five-year review of essential fish habitat (EFH) consistent with the EFH guidelines (the process started with the release of the Issues and Options Paper in April 2004). At this time, NMFS is reviewing the information available for all HMS, including billfish, and will determine which species need updates to their EFH identifications. Any updates or resulting changes in management will be done in a future rulemaking.

As described below, NMFS is also taking additional actions in this proposed rule: (1) a formal withdrawal of the 2003 proposed rule to implement the ICCAT 250 fish limit (September 17, 2003; 68 FR 54410) and (2) a formal decision not to include in the draft HMS FMP the exemption to the ''no sale'' provision for the artisanal handline fishery in Puerto Rico as outlined in the 1988 Billfish FMP. NMFS has also reviewed a petition for rulemaking from Blue Ocean Institute et al. that requested NMFS look at a particular BFT spawning area in the Gulf of Mexico (copies of the petition can be requested, see **ADDRESSES**). An additional consideration was a settlement agreement related to white marlin that is awaiting court approval in the *Center for Biological Diversity* v. *NMFS*, Civ. Action No. 04–0063(D.D.C). The petition and settlement agreement are discussed further in the Time/Area Closures section below.

Consolidation of FMP for Atlantic Tunas, Swordfish, and Sharks and FMP for Atlantic Billfish

Currently, management of Atlantic HMS is accomplished through two different FMPs: the FMP for Atlantic Tunas, Swordfish, and Sharks and the FMP for Atlantic Billfish. The 1999 decision to maintain two different FMPs was based on the idea that the billfish fishery is recreational only while the tuna, swordfish, and shark fisheries are both commercial and recreational. Despite this decision, the regulations for both of these FMPs were consolidated under 50 CFR part 635 in 1999.

Since that decision, NMFS has further recognized the interrelated nature of these fisheries and the need to consider management actions collectively. For example, anglers fishing for Atlantic tunas, swordfish, sharks, or billfish must obtain an HMS Angling permit and must follow the recreational bag and size limits for all these species. Additionally, any management measures enacted for billfish recreational fishermen will likely have impacts on recreational fishermen for other HMS and vice versa. Thus, in the draft HMS FMP related to this rule, NMFS consolidates the two FMPs into one FMP, the consolidated Atlantic HMS FMP.

Consolidating the FMPs will allow NMFS to take a more ecosystem-based approach to these fisheries whose recreational fishermen often fish for tunas, swordfish, sharks, and billfish on the same trip and are required to have the same permit, and whose commercial fishermen catch billfish as bycatch while targeting other HMS. NMFS does not expect the consolidation of the FMPs to have an impact on the existing regulations because the regulations have been combined since 1999. NMFS also does not expect any impact on the priorities of the agency or on the composition of the Advisory Panels as a result of the consolidation.

Unless specifically proposed in this rule or in the HMS FMP, the draft HMS FMP, in itself, would not change existing provisions of either the 1999 Atlantic Tunas, Swordfish, and Shark FMP (and its 2003 amendment), the 1988 Billfish FMP (and its 1999 amendment), or any implementing regulations. However, the 1988 FMP for Atlantic Billfish contained a prohibition on the sale or purchase of Atlantic billfish, and simultaneously included a limited exemption from the ''no sale'' provision to accommodate a small-scale artisanal fishery in Puerto Rico that occasionally landed blue marlin. The exemption to the ''no sale'' provision was subject to a number of conditions and restrictions, including: only billfish caught on handlines having fewer than six hooks could be retained for sale; vessels retaining billfish for sale could not have a rod and reel onboard; billfish could be sold only in Puerto Rico; a maximum of 100 billfish per year could be landed and sold; if more than 100 billfish per year were landed under the exemption, the Councils would consider removing the exemption; all existing fishermen wishing to sell billfish would be required to obtain a permit; the Caribbean Fishery Management Council, in cooperation with the Government of the Commonwealth of Puerto Rico, would develop and implement a system for tracking billfish landings under the exemption; and the exemption would not be in effect until the permitting and tracking systems were operative, pending approval by the five involved Councils at that time.

The exemption from the ''no sale'' provision for the Puerto Rican artisanal handline fishery has never been implemented because the aforementioned conditions have not been met, either prior to or following transfer of the FMP to Secretarial authority. NMFS is proposing not to carry forward the exemption to the no sale provision for the Puerto Rican artisanal handline fishery into the draft HMS FMP based on the overfished status of Atlantic billfishes, non-fulfillment of the conditions necessary to implement the exemption to the no sale provision and resultant non-implementation of the provision over a period of 18 years, public comment, and the support of the involved fishery management councils (specifically the Caribbean Council, which would be most directly impacted by the potential elimination of the exemption provision).

Analyses of Alternatives

The following is a summary of the alternatives analyzed in the DEIS for the HMS FMP. These elements are arranged in the following sections: Bycatch Reduction, Rebuilding and Preventing Overfishing, Management Program Structure, and EFH Update.

1. Bycatch Reduction

Under National Standard 9 of the Magnuson-Stevens Act, NMFS is required, to the extent practicable, to minimize bycatch and, to the extent that bycatch cannot be avoided, minimize bycatch mortality. In this proposed rule, NMFS examined two strategies specifically aimed at reducing bycatch and bycatch mortality: conducting workshops to teach handling/release techniques and species identification, and examining the effectiveness of time/area closures in reducing bycatch. As described below, other sections (e.g., Section 2 regarding finetooth sharks) in this proposed rule also consider the requirement to minimize bycatch and bycatch mortality. Detailed analyses of bycatch reduction alternatives are presented in the draft HMS FMP. Only a summary of the major points addressing workshops and time/area closures are described below.

A. Workshops

NMFS is proposing at 50 CFR 635.8 two types of workshops for participants in HMS fisheries. The first type would instruct participants in the safe handling, release, and identification of protected resources. The second type would instruct participants in the correct identification of HMS, particularly Atlantic sharks. The alternatives for and discussion of these workshops is provided below. Regardless of the requirements, any fishermen, dealer, or interested party would be welcome to attend any or all protected species or HMS identification workshops.

i. Protected Species Workshops

On October 29, 2003, a Biological Opinion (BiOp) was issued in conjunction with Atlantic shark fishery management measures implemented in a final rule for Amendment 1 to the 1999 HMS FMP (December 24, 2003; 68 FR 74746). Among other requirements, the 2003 BiOp included a requirement for workshops or other training programs to disseminate information regarding protocols and equipment for safe release and disentanglement of protected species, including information specific to smalltooth sawfish and sea turtles. The 2003 BiOp specifically required that the workshops concentrate on ways to reduce the potential for serious injury or mortality should incidental capture via hooking or entanglement occur.

On June 1, 2004, a BiOp for the HMS pelagic longline fishery concluded that the continued operation of the pelagic longline fishery is likely to jeopardize the continued existence of leatherback sea turtles. In order to achieve the target post-release mortality rates for sea turtles specified in the 2004 BiOp, it is imperative that NMFS ensure all participants are aware of, and are proficient with, the safe release and disentanglement gears and protocols outlined in the BiOp. Mandatory workshops that would provide this type of training for vessel operators are required in the 2004 BiOp.

In addition to addressing safe handling and disentanglement protocols, the workshops in this proposed rule would also disseminate information specific to the identification of protected resources commonly encountered during longline and gillnet fishing activities. Providing fishermen with the skills necessary to properly identify protected resources that are encountered during fishing activities would increase the likelihood that they employ the proper release and disentanglement protocols, improve the accuracy of logbook data and extrapolated take estimates, and assist fishermen in complying with the reporting regulations in 50 CFR part 635.

The preferred alternatives for the protected resources workshops would implement one-day mandatory workshops and certification for HMS pelagic and bottom longline and shark gillnet vessel owners and operators by January 1, 2007. Mandatory vessel owner attendance would provide a link to vessel permit issuance and renewal ensuring that workshops are well attended and ensuring that vessel owners, if they are not the vessel operators, know what should be happening on their vessels. Shark and directed or incidental swordfish limited access permits would not be renewed without a copy of the certificate if logbooks indicate that longline or gillnet gear were used on at least one trip for that vessel in the preceding year or, in the case of vessels that were transferred in the preceding year, since the transfer. Mandatory operator attendance ensures that there is at least one person on board the vessel during fishing activities that is adept at the safe handling and release protocols and protected resource identification. Additionally, all owners and operators that attended and successfully completed industry certification workshops (held on April 8, 2005, in Orlando, Florida, and on June 27, 2005, in New Orleans, Louisiana), as documented by the workshop facilitators, are proposed to receive automatically valid protected species workshop certificates prior to the effective date of January 1, 2007. These workshops were attended by NMFS personnel, sponsored by industry representatives with experience in sea turtle handling and release protocols and fishing gear, and well-attended by pelagic longline fishermen.

The preferred one-day workshops are not expected to result in excessive economic impacts, as they will be scheduled at numerous locales along the Atlantic coast, including the Gulf of Mexico and Caribbean, minimizing travel and lost fishing time. Requiring HMS longline and shark gillnet owners and operators to attain recertification every three years would balance the ecological benefits of maintaining familiarity with the protocols and the economic impacts of travel costs and lost fishing opportunities due to workshop attendance.

NMFS considered a range of alternatives for these protected species workshops including voluntary workshops (no action). NMFS felt that voluntary workshops could limit the dissemination of the safe release, disentanglement, and protected resources identification information, and, therefore, would not guarantee compliance with the BiOps.

NMFS also considered mandatory workshops for the owners, operators, and the crew of all HMS longline vessels. This alternative would require the greatest number of participants to become skilled in the release protocols and protected resource identification. This alternative was not preferred due to the level of economic impacts to the longline fishery and the transient nature of vessel crew members. Under the preferred alternatives, because operators would be required to attend the workshops, the operators would be responsible for ensuring that the appropriate crew members were proficient at the release techniques and protected resource identification.

In addition to the three-year mandatory recertification for the protected species workshops, NMFS also considered mandatory recertification every two or five years. Recertification every two years may yield the most positive ecological impacts, however, this alternative would also have the greatest economic costs to the industry. Recertification every five years may allow a more extensive period of time to lapse between certification workshops than necessary to maintain proficiency and provide fishermen with updates on research and development of handling and dehooking protocols.

ii. HMS Identification Workshops

The second type of workshops would aim to improve HMS identification skills. NMFS considered these workshops due in part to comments received from the HMS Advisory Panel and members of the general public stating the need for improved identification skills of participants in HMS fisheries, especially shark dealers. The preferred alternatives would require anyone federally permitted to receive, trade, purchase, or barter sharks from a vessel (shark dealers), or a suitable proxy, to attend an HMS identification workshop for certification before January 1, 2007. 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. The proxy would need to be a person who is employed by a place of business covered by the dealer's permit; is a primary participant in identification, weighing, or first receipt of fish as they are offloaded from a vessel; and is involved in filling out dealer reports.

The permitted shark dealer or proxy would need to renew the certification every three years. Shark identification is challenging for dealers because they encounter many different shark species lacking fins and head (sharks that are dressed are often called ''logs''). Dealers are required to enter species data into dealer reports based on their purchase of fish from numerous fishermen. These reports are used for stock assessments and quota monitoring. Thus, incorrect species data could have ecological impacts and, in the long-term, could impact the accuracy of stock assessments. Economic and social impacts on the shark dealers would be minimized by offering workshops at several locations per region, near commercial and recreational HMS fishing ports during non-peak fishing times.

NMFS considered a range of alternatives for these identification workshops including voluntary HMS identification workshops for dealers, recreational fishermen, and all commercial vessel owners and operators (no action). From previous voluntary workshops on other topics, NMFS has found that voluntary workshops are generally not well attended and therefore are often not an efficient use of resources.

NMFS also considered mandatory identification workshops for all HMS dealers. However, requiring all HMS dealers to attend may be inappropriate as swordfish and tuna dealer permit holders generally only see a relatively limited number of HMS species and are not faced with the same identification difficulties as the shark dealers. NMFS felt that other alternatives, such as mandatory workshops for commercial longline owners and/or operators, are a lower priority because these individuals observe the fish intact, thereby facilitating a positive species-specific identification. While these fishermen may need workshops in the future, in this proposed rule and draft HMS FMP, NMFS felt requiring shark dealers, whose data are used for both quota monitoring and stock assessments and who must identify more numerous and difficult species, was a higher priority at this time. Generally, logbook data is used for stock assessment purposes and to verify dealer reports, not quota monitoring. Alternatives to expand participation to include owners and/or operators in the charter headboat, general category, and handgear/harpoon fisheries could result in extensive negative economic impacts due to travel and lost fishing time as it would involve a much larger portion of the fishery. Mandatory workshops for all HMS Angling permit holders would result in the most extensive negative economic impacts as it would affect the largest single group of permit holders.

NMFS also considered recertification every two, three, and five years. Recertification every two years has a greater economic impact to the dealers and a slightly positive impact on species identification. Since the identification of the species is not likely to change in the two years (species names do occasionally change as scientific information improves) and the dealers are interacting with the species on a regular basis, the certification renewal could take place with less frequency. Decreasing the frequency of renewal to every five years could introduce greater error in the species identification if the dealer begins to confuse similar species. Requiring the shark dealers to attain recertification every three years would balance the ecological benefits of maintaining the ability to properly identify the sharks and the economic impacts of workshop attendance due to travel costs and lost fishing opportunities.

B. Time/Area Closures

Time/area closures were first implemented for Atlantic HMS beginning in 1999 in order to reduce bycatch and bycatch mortality while minimizing the reduction in target catch. As described in the draft HMS FMP, these closures have proven to be effective at reducing bycatch. Nonetheless, several HMS such as blue and white marlin and bluefin tuna are overfished with overfishing still occurring, and protected species such as leatherback and loggerhead sea turtles continue to interact with HMS gears. As a result, NMFS considered a range of alternatives to implement additional closures and/or modify existing closures, as necessary. As reflected in the HMS FMP, NMFS conducted extensive analyses regarding the impact of closures on all bycatch, particularly white and blue marlin, sea turtles, and bluefin tuna, in developing alternatives and selecting preferred alternatives. Also, as noted earlier, the analyses took into account the BFT spawning ground petition and the white marlin settlement agreement. NMFS is proposing to implement two alternatives that would: (1) complement the Gulf of Mexico Fishery Management Council's (GMFMC) time/area closures regarding Madison-Swanson and Steamboat Lumps closed areas and (2) establish criteria to be considered when contemplating regulatory framework adjustments to implement new time/area closures or make modifications to existing time/area closures.

The first preferred alternative would implement HMS management measures in the Madison-Swanson and Steamboat Lumps closed areas, consistent with a September 2003 GMFMC request to NMFS. The proposed rule would prohibit all HMS fishing from November through April in the Madison-Swanson and Steamboat Lump closures, and allow recreational surface trolling only from May through October. If implemented, the HMS management measures would expire on June 16, 2010, consistent with GMFMC recommendations. Both of these closures are located just shoreward of the current DeSoto Canyon Closed Area for pelagic longline fishing in HMS fisheries.

These closed areas were implemented in 2000 by the GMFMC in order to provide protection for spawning aggregations of gag grouper. The GMFMC requested NMFS to close the areas to HMS fishing to eliminate a loophole and to allow the GMFMC a better opportunity to evaluate the effectiveness of the closed area as a fishery management tool. Other species, including various groupers, snappers, and porgies could benefit by the closures. Any impacts on HMS species and HMS fishermen and communities are expected to be minimal. Only three HMS commercial trips were reported in the closed areas from 1997 to 2003. Additionally, recreational and charter/headboat fishing trips for HMS in the closed areas are not likely to be significantly curtailed due to the allowance for surface trolling from May through October, which are the prime fishing months.

The second preferred alternative would establish criteria at 50 CFR 635.34(d) to be considered when implementing new time/area closures or making modifications to existing time/area closures. These criteria would provide a more definitive process for the establishment or modification of time/area closures while allowing for greater transparency and predictability in the decision-making process. Criteria that would be considered may include the following: any ESA-related issues, concerns, or requirements, including applicable Biological Opinions; 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 information, bycatch, and fishing effort data; applicable research;

social and economic impacts; and the practicability of implementing new or modified closures, including consistency with the FMP, Magnuson-Stevens Act, and other applicable law. If the species is an ICCAT-managed species, NMFS would need to determine the overall effect of the United States' catch of that species before implementing time/area closures. In these cases, other factors that NMFS would consider before implementing time/area closures include gear types and the location of and timing of a closed area. NMFS would attempt to balance ecological benefits with economic and social impacts. NMFS would also consider alternatives to closed areas, such as reducing quota(s), mandatory gear modifications, or alternative fishing practices such as designated fishing days. Thus, before the implementation of a time/area closure, NMFS would determine that such a closure would be the best option for a given set of management goals, consistent with the FMP, the Magnuson-Stevens Act, and applicable laws.

Besides implementing new time/area closures, NMFS may also consider modifying existing closed areas using these same criteria. The current time/area closures were implemented to meet specific management objectives relevant at that time and were intended to be reviewed and modified as appropriate, over time as those objectives were met or other management issues arose. Specifically, NMFS intended to modify existing closures, as necessary, to allow utilization of a given fishery once the objectives of the time/area closures had been met. Additionally, modifications may be needed if data showed the desired impact was not being met or oceanographic conditions changed. Additionally, because fisheries, fishing gear, fishing practices, and stock status change over time, occasionally NMFS must examine the continued need for existing time/area closures. One method of doing this would be for NMFS to conduct, fund, or support research, such as testing methods for reducing bycatch of protected, prohibited, and non-target species. Such research would need to be part of a scientifically justified research plan, identifying the rationale, objectives, methodology, and experimental design of the research, and it would be limited in scope and magnitude in terms of ecological and socio-economic impacts. Research in both open and closed areas may be warranted to collect data on the spatial and temporal relationship between target and bycatch species and to provide data for use in considering the criteria listed above. Such research could be cooperative in nature to include different stakeholders in the research process.

Ultimately, the criteria above are aimed to develop smaller, more focused time/area closures that maximize bycatch reduction while minimizing reductions in catch of target species. The criteria themselves would not be expected to have any ecological, economic, or social impacts. Rather, the appropriate use of the criteria would be expected to have overall positive ecological impacts; NMFS would minimize, to the extent practicable, economic and social impacts.

As a clarification, 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 target species and minimizing the social and economic impacts. However, closures are not the only means of addressing bycatch, and in some cases, may increase bycatch (see analyses in the HMS FMP of many of the time/area closure alternatives). Bycatch in and of itself would not necessitate implementation of a time/area closure but could if the HMS stock was either overfished and/or experiencing overfishing; the bycatch is a prohibited, threatened, or an endangered species; and no other option exists to reduce interactions in the time period required. In such cases, time/area closures could be part of a rebuilding plan for overfished species and/or serve as a method for decreasing interactions with protected species.

Besides the two preferred alternatives described above, NMFS considered a number of additional alternatives including: (1) Maintaining the existing time/area closures (no action alternative); (2) prohibiting the use of pelagic longline gear in HMS fisheries in the central portion of the Gulf of Mexico from May through November; (3) prohibiting the use of pelagic longline gear in HMS fisheries in the Northeast during the month of June; (4) prohibiting the use of pelagic longline gear in HMS fisheries in the Gulf of Mexico from April through June; (5) prohibiting the use of pelagic longline gear in HMS fisheries in the Gulf of Mexico west of 86° W. Long. year-round; (6) prohibiting the use of pelagic longline gear in HMS fisheries in an area of the Northeast to reduce sea turtle interactions; (7) modifying the existing Charleston Bump time/area closure to allow the use of pelagic longline gear in all areas seaward of the axis of the Gulf Stream; (8) modifying the existing Northeastern U.S. time/area closure to allow the use of pelagic longline gear in areas west of 72°47′ W. Long. during the month of June; (9) prohibiting the use of bottom longline gear in an area off the Florida Keys to protect endangered smalltooth sawfish; and (10) prohibiting the use of pelagic longline gear in HMS fisheries in all areas. All of the alternatives above could be implemented alone or in combination with any of the other alternatives. In the draft HMS FMP, NMFS describes the impacts of some of the most likely combinations of alternatives.

The no action alternative has been effective at reducing bycatch and bycatch mortality in HMS fisheries. However, maintaining the existing closures would not protect spawning areas of gag grouper, per the GMFMC request. The various alternatives to close portions of the Gulf of Mexico or mid-Atlantic could have some ecological benefit for some target and non-target species and protected species and negative ecological impacts for other species. Detailed analyses of each alternative are provided in the HMS FMP. As reflected in those analyses, NMFS did not find any closure or group of closures that would have positive ecological benefits for all species examined, particularly marlin, sea turtles, and BFT. Even when combining the alternatives, the ecological benefits for some species were minimal at best with increases in discards of other species. Additionally, the economic and social impacts of the additional closures considered could be substantial. Thus, NMFS is not preferring any new closures at this time, but may consider these closures again in the future if additional protections for a specific species or group of species is needed.

One of the Gulf of Mexico alternatives that NMFS considered was suggested in a petition for rulemaking from Blue Ocean Institute et al. 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 the Gulf of Mexico bluefin tuna spawning area from April through June (101,670 nm^2; 3 months). Assuming no redistribution of effort (i.e., all hooks set in the proposed closure area are removed and not set in any open areas), the logbook data indicate that this alternative 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 bluefin tuna. However, assuming that effort is redistributed to open areas (i.e., all hooks set in the proposed closure area are replaced by hooks set in remaining open areas),

bycatch is predicted to increase for all species except leatherback and other sea turtles. Even bluefin tuna discards, which showed a fairly dramatic decline without redistribution of effort, are predicted to increase by 9.8 percent with redistribution of effort. The apparent increase in predicted bluefin tuna discards with redistribution of effort is likely due to the fact that bluefin tuna are caught in months other than April through June in the Gulf of Mexico, as well as the high number of bluefin tuna discards in other areas. This is reflected in some of the other alternatives analyzed as described in the draft HMS FMP.

NMFS also considered alternatives that would modify existing closures. As with the analyses of new closures, the analyses of the modifying existing closures showed mixed results in terms of ecological benefits and economic impacts. In some cases, the modified areas would result in captures of smaller sized swordfish or in higher levels of bycatch. For these reasons, NMFS does not prefer any modifications to the existing closures at this time. However, because the ecological impacts were generally minimal, these alternatives could be considered as a means to offset any negative ecological or economic impacts resulting from any future time/area closures.

NMFS considered but is not preferring a closure of an area off Florida to protect smalltooth sawfish, at this time. While the area examined contains the largest number of smalltooth sawfish observed caught in the bottom longline fishery, only five smalltooth sawfish have been observed caught there. It is possible that closing this area could displace fishing effort into an area that has higher smalltooth sawfish catch rates or that is more critical toward the recovery of the species. A Smalltooth Sawfish Recovery Team is working to produce a recovery plan for smalltooth sawfish and to designate critical habitat. In order to better ensure positive ecological impacts on sawfish and to minimize any economic impacts on fishermen, NMFS would prefer to wait until the recovery plan is complete before taking action.

NMFS also considered prohibiting the use of pelagic longline gear in all HMS fisheries. This alternative could have some ecological benefits for any non-migratory species that remain within the U.S. EEZ. However, for species that travel outside the U.S. EEZ, such as HMS or sea turtles, this alternative could have negative ecological benefits because these species need to be internationally managed. In the case of HMS, the United States takes only a small portion of the total allowable catch (TAC). In the case of sea turtles, unlike many other countries, the United States interacts with a minimal number of turtles and releases all of those caught. If the United States reduces the amount of HMS taken commercially by a significant amount by prohibiting pelagic longline fishing, other countries likely would take the U.S. portion of the TAC and would export those fish to U.S. consumers. Many of those countries do not have the bycatch reduction measures that the United States does. Furthermore, the United States is one of the few countries that supply much of the research on HMS and other species that interact with pelagic longline gear. Additionally, prohibiting the use of pelagic longline gear would have significant negative economic impacts on fishermen, fishing communities, suppliers, and dealers in all Atlantic and Gulf of Mexico states. Thus, NMFS prefers to seek other commercial and recreational management measures that could reduce bycatch without the adverse international or economic impacts of prohibiting pelagic longline.

2. Rebuilding and Preventing Overfishing

The Magnuson-Stevens Act requires NMFS to rebuild overfished species and to prevent overfishing. The draft HMS FMP addresses alternatives for three stocks (northern Atlantic albacore tuna, finetooth sharks, and Atlantic billfish) that have been determined to be either overfished or experiencing overfishing.

A. Northern Albacore Tuna

The U.S. fishery for northern Atlantic albacore is essentially dominated by two sectors. The commercial longline sector harvests albacore tuna as incidental bycatch in the swordfish and tunas pelagic fisheries. The recreational rod and reel sector targets albacore and other tunas out of northeast coastal ports. In the October 1999 Report to Congress on the Status of U.S. Fisheries, NMFS identified the northern albacore tuna stock as overfished. International fishery management efforts are needed for northern albacore tuna as the United States actually contributes to only a small portion of northern albacore tuna mortality. It is likely that preventing all U.S. mortality would not prevent overfishing from occurring on this stock. Alternatives for developing a rebuilding plan for northern albacore were published in a proposed rule issued on May 24, 2000 (65 FR 33519), and were discussed in the EA/RIR/IRFA prepared for that proposed rule. In the final rule (December 12, 2000; 65 FR 77523), NMFS indicated that, in establishing the foundation for an international rebuilding program, it would work through ICCAT to adopt a target stock size together with a time frame for rebuilding that included flexibility. Since the final rule, the U.S delegation to ICCAT has advocated a TAC for northern albacore tuna set at a level less than the current estimate of replacement yield (34,500 mt ww). Other ICCAT members have not shared the U.S. position that immediate catch reductions were needed to rebuild the spawning stock biomass to levels that would support MSY. Consequently, ICCAT has responded by adopting a series of recommendations (annually for 2000–2003) to set a TAC at the replacement yield level of 34,500 mt through 2006, together with country specific allocations in order to control compliance. In addition, the 1998 recommendation on limiting vessel capacity for northern albacore tuna has remained in force. Irrespective of the established TAC, reported catches have been significantly below the replacement yield level in recent years. Major harvesters (European Union countries) have attributed the decline in catches to gear changes (shifting from banned gillnets to trolling) and to availability (fish concentrations further offshore under prevailing oceanographic conditions) rather than further declines in abundance. If true, the low catches in recent years may have allowed some rebuilding to occur. Depending on the results of the scheduled 2007 stock assessment, the United States will continue to seek an international northern albacore tuna rebuilding program with a target stock level, a time table, and reference points. Because the formal rebuilding plan was not included in the 1999 Atlantic Tunas, Swordfish, and Sharks FMP, it is considered here for inclusion in the FMP. NMFS considered three different alternatives: establish a foundation for an international rebuilding program (the preferred alternative), no action, and establish a unilateral rebuilding plan. No regulatory text is proposed or required for this alternative. Regulatory text would be proposed, as warranted, once a international rebuilding plan is established.

ICCAT has determined that the northern albacore tuna stock is below the biomass necessary to sustain maximum sustainable yield (MSY). Management advice from ICCAT's Standing Committee for Research and Statistics (SCRS) noted a stable stock at annual catches of 34,500 metric tons (mt) whole weight (ww), while spawning stock biomass could be

increased if catches do not exceed 31,000 mt ww. Since ICCAT's recommendation establishing a TAC was issued in 2000, the United States has annually taken less than two percent of the recorded total annual international landings, averaging 416 mt ww a year. This average is well below the United States annual TAC allocation of 607 mt ww, which has not been exceeded in any year.

The preferred alternative would seek to establish a foundation that can be used in negotiations with ICCAT to develop a rebuilding program for Atlantic northern albacore tuna, including targets for recovery, fishing mortality rate limits, and explicit interim milestones expressed in terms of measurable improvements of the stock. If successful, an Atlantic-wide revised TAC for northern albacore tuna, along with other conservation and management measures, would be adopted by ICCAT to rebuild the stock. The United States would then implement the ICCAT Rebuilding Program for albacore through appropriate measures (such as quotas, effort limitations, size and retention limits), in concert with the ICCAT recommendations, in the domestic fisheries.

The United States is responsible for only two percent of Atlantic-wide albacore landings; thus, the rebuilding plan would rely heavily on international cooperation and compliance with management measures. U.S. domestic fleets could experience short term negative economic impacts if harvest or effort restrictions become necessary; however, under current effort levels, the United States fleet would have to be restricted by more than 25 percent on average of the current TAC before an impact would be felt. If minimum size or retention limits were part of the ICCAT rebuilding plan, the United States pelagic longline fleet could be negatively impacted by having to discard a portion of the albacore catch. This may also result in an increase of dead discards if individual fish do not survive capture and release. The recreational fleet could also be impacted, as catch limitations might have a negative impact on the angler consumer surplus, but the extent is unknown, as many recreational trips targeting albacore often target other tunas or coastal pelagic species. This also may result in an increase of dead discards. The other alternatives of no action or unilateral action are not expected to rebuild northern albacore tuna. Thus, they are not preferred.

B. Finetooth Sharks

Finetooth sharks are small coastal sharks (SCS) found in shallow, inshore waters of the south Atlantic and Gulf of Mexico. The 2002 stock assessment for SCS determined that overfishing of finetooth sharks is occurring but that other species in the SCS complex were not overfished or experiencing overfishing. The next SCS stock assessment will take place in 2007. These sharks are primarily caught with gillnet, bottom longline, or recreational gear.

There are currently only five vessels that specifically target sharks with gillnet gear in the South Atlantic. These vessels contribute less than 10 percent to the overall commercial finetooth shark landings. The majority of finetooth shark landings are occurring in other commercial fisheries that are not targeting sharks but landing them incidentally to other species. These fisheries include fisheries in state waters, fisheries managed by the Regional Fishery Management Councils, Interstate Marine Fisheries Commissions, and/or fisheries that are not currently managed by either state or Federal regulations. NMFS considered four alternatives to address overfishing of finetooth sharks.

Under the preferred alternative, NMFS would identify sources of finetooth shark fishing mortality by: (1) contacting the Atlantic Fishery Management Councils, Interstate Marine Fisheries Commissions, and states to collect more data on finetooth landings outside of HMS fisheries, (2) expanding existing observer coverage in the existing directed shark gillnet fishery observer program to include all incidental and directed shark permit holders fishing with gillnet gear, and (3) ensuring that finetooth sharks are included as a select species for bycatch sampling in the shrimp trawl fishery observer program. NMFS would use this information on how and by whom finetooth sharks are caught and/or landed, in a new stock assessment and in guiding additional management measures. No regulatory text is proposed or required for this alternative at this time. Regulatory text would be proposed, as warranted, in a separate rulemaking.

The no action alternative would not result in obtaining the additional information on finetooth shark landings necessary to determine which fisheries may be contributing to fishing mortality. This alternative would result in negative ecological impacts because it would not enable NMFS to determine which fisheries are catching finetooth sharks.

NMFS also considered an alternative enacting commercial management measures including trip limits, a reduction in the SCS quota, closing the directed shark gillnet fishery, and/or gear restrictions. These measures could result in additional dead discards as finetooth sharks are susceptible to a broad range of gillnet mesh sizes, are generally dead at harvest, and appear to be caught in gillnet fisheries that are not targeting sharks and that would continue to fish for their target species while discarding finetooth sharks. Reducing the SCS quota would have limited conservation benefits as finetooth sharks only comprise 35 percent of commercial landings and the SCS quota is not fully utilized. Based on comprehensive observer data, the five vessels that use gillnet gear to target sharks are only responsible for a small portion of the finetooth shark fishing mortality. Therefore, closing this fishery would not likely prevent overfishing. Under this alternative, fishermen targeting sharks would likely experience economic impacts as a result of having to switch gear, having to spend more time traveling to and from offloading sites as a result of reduced soak times or a trip limit, or as a result of being prevented from fishing.

NMFS considered a fourth alternative that would require the use of circle hooks on recreational trips targeting SCS and/or increasing the minimum size for finetooth sharks. NMFS does not have any conclusive evidence that use of circle hooks would decrease post hooking mortality of sharks, although, they have proven effective at reducing post hooking mortality for other HMS species. Thus, NMFS is not preferring this alternative, but is encouraging recreational fishermen to use circle hooks and is considering requiring the use of circle hooks in billfish tournaments (see Section C Atlantic Billfish below). Finetooth sharks only comprise 1.5 percent of the recreational harvest of SCS, therefore, measures directed at the recreational fishery would likely have limited conservation benefits especially since the current minimum size limit is already above the total length at which finetooth sharks are sexually mature. The commercial and recreational management measures described in the non-preferred alternatives may be necessary once NMFS has determined which fisheries are contributing to finetooth shark fishing mortality and/or further information on finetooth shark status is attained.

C. Atlantic Billfish

Atlantic blue and white marlin are overfished with overfishing continuing. West Atlantic sailfish are also overfished. The most recent stock assessments for Atlantic blue and white marlin indicate that total marlin stock abundance is at approximately 40 percent and 12 percent, respectively, of biomass levels necessary to support maximum sustainable yield (B_{MSY}). The assessments further indicate that the fishing mortality rates for Atlantic blue and white marlin are estimated to be approximately 4 and 8.25 times higher, respectively, than rates which would allow achievement of the maximum sustainable yield (F_{MSY}). The most recent stock assessment for west Atlantic sailfish was unable to estimate B_{MSY} or F_{MSY}, however the assessment considered current catch levels sustainable. Current Atlantic-wide stock status of Atlantic blue and white marlin, including biomass levels and fishing mortality rates, as per the most recent population assessments, do not appear to be consistent with achieving domestic management goals of 1.3 B_{MSY} for Atlantic blue and white marlin. The United States is proposing management measures that will help in achieving this goal, and will continue to work with ICCAT on Atlantic billfish rebuilding efforts.

Given the primarily catch-and-release nature of the U.S. recreational Atlantic billfish fishery, and the resultant low level of domestic landings, it is appropriate to focus management efforts on reducing aggregate fishing mortality, including post-release mortality and mortalities associated with landings, rather than reducing landings alone. The proposed management measures are anticipated to provide further reductions in domestic billfish mortalities in the directed recreational Atlantic billfish fishery while minimizing and mitigating adverse socio-economic impacts to the extent practicable. These proposed management measures are described below under: gear restrictions and landings restrictions.

i. Gear Restrictions

NMFS considered three gear restriction alternatives, including a no action alternative. NMFS is proposing at 50 CFR 635.21(e)(2) to limit participants in Atlantic billfish tournaments to deploying only non-offset circle hooks when using natural bait or natural bait/artificial lure combinations, effective January 1, 2007, to December 31, 2011. This would mean that no person participating in an HMS fishing tournament for Atlantic billfish would be allowed to deploy a J-hook or offset circle hook in combination with natural bait or a natural bait/artificial lure arrangement.

Circle hooks have been shown to significantly reduce injuries and post-release mortality as compared to J-hooks for billfish and other species. Under certain assumptions, NMFS estimates that requiring circle hooks with natural bait or natural bait/artificial lure rigs in billfish tournaments could provide a 23–percent absolute reduction in the post-release mortality rate for white marlin released in tournaments, which equates to a 65.7–percent reduction relative to J-hooks. Again, under certain assumptions, requiring circle hooks could result in an estimated 302 Atlantic white marlin surviving a catch-and-release event during an average year, that would otherwise be expected to die after release. NMFS anticipates that this alternative would also provide unquantified positive mortality benefits for other species with which billfish tournament participants interact, including, but not limited to, sailfish, blue marlin, tunas, dolphin, and wahoo. Additional ecological benefits may also accrue outside of tournaments as anglers become proficient and comfortable with circle hooks and increase voluntary use outside of tournaments.

NMFS anticipates that socio-economic impacts of this alternative would be limited. Hooks represent a minor capital investment relative to other costs associated with participating in the billfish fishery. NMFS estimates that requiring circle hooks may result in a minor positive economic impact for billfish tournament participants as information suggests that circle hooks cost slightly less than comparable J-hooks, on average. Impacts on hook manufacturers, retailers, and anglers would also likely be limited given that J-hooks would still be permitted outside of tournaments, and within tournaments if paired with artificial lures. Further, the delay in date of effectiveness should provide anglers, hook manufacturers, and hook retailers, adequate time to utilize stocks of J-hooks that might otherwise be used by, or sold to, tournament participants.

The preferred alternative would allow Atlantic billfish tournament participants to continue to use J-hooks with artificial lures on the same trip that they are using circle hooks with natural bait. NMFS received public comment during scoping and on the predraft document that fishermen tend to target white marlin and sailfish with natural baits while either drifting or slow trolling and target blue marlin by trolling at a higher rate of speed with the fish striking at the lure. What is known about hooking mechanics, as well as fishing practices and feeding preferences for blue marlin, indicates that trolling circle hooks at high speed would likely be ineffective at capturing these striking fish. Blue marlin are more likely to be captured as they strike at a fast moving lure, as opposed to deeply ingesting a bait or lure. This is believed to result in increased rates of hooking in the mouth or jaw with less resultant damage to vital tissues or internal organs and, ultimately, lower rates of post-release mortality. Known rates of post-release mortality for Atlantic white and blue marlin captured on recreational gear using J-hooks, 35 percent and 11 percent, respectively, supports this contention. As such, NMFS is not proposing to eliminate the use of J-hooks with artificial lures.

The no action alternative would maintain existing recreational management measures such as minimum sizes, limiting allowable gear to rod and reel only, permitting requirements, and reporting requirements. As described above, these measures, in addition to those on the commercial fishery, have not been effective at to reducing fishing mortality to the appropriate levels. As such, additional actions, including international actions, are needed. Furthermore, while minimum size limits can constrain landings and associated mortalities by limiting the universe of potential fish that qualify for landing, they have little effect on post-release mortality.

NMFS also considered requiring circle hooks with natural baits for all participants in all segments of HMS recreational fisheries. While this alternative could reduce mortality rates on billfish, it was not preferred at this time because there are only limited data on the impacts of circle hooks on other HMS species, including effects on post-release mortality and catch rates. As such, the impacts of this alternative on anglers targeting species other than billfish could not be adequately analyzed at this time. As billfish anglers become more familiar with circle hooks and begin using them to target other HMS, NMFS will likely gather additional information on any potential impacts on other species. Similar to the preferred alternative, this alternative would allow anglers to continue to use J-hooks with artificial lures.

ii. Landings Restrictions

Currently, NMFS has no measures in place, other than minimum sizes, that directly limit landings of Atlantic

billfish in the Atlantic directed billfish fishery. NMFS considered six alternatives, including no action, and is preferring two alternatives that could limit landings in the directed Atlantic billfish fishery and the mortality associated with such landings, consistent with international obligations. The first preferred alternative would codify at 50 CFR 635.27 an international recommendation on recreational billfish landing limits. The second preferred alternative would allow a catch-and-release only fishery for Atlantic white marlin for five years, effective in 2007 (see proposed regulations at 50 CFR 635.20, 635.22, and 635.30).

At the 2000 ICCAT annual meeting, the United States agreed to limit recreational landings of Atlantic blue and white marlin to 250 fish, combined, on an annual basis. To codify and implement this recommendation, the first preferred alternative would provide for inseason minimum size adjustments, effective January 1, 2007. The current minimum size limits restrict marlin landings by reducing the pool of available legal-sized fish. However, increased effort or changes in angler behavior could result in increased landings and mortality. Under this alternative, NMFS could increase the minimum size of Atlantic blue and white marlin, if necessary, to between 117 - 138 inches (297 - 350.5 cm) and 70 - 79 inches (178 - 201 cm), respectively, during a fishing year to slow landings.

Allowing for inseason minimum size increases could minimize potential adverse socio-economic impacts on late season tournament operators and fishery participants by slowing landing rates and allowing landings to continue over the entire fishing year. Nevertheless, if the 250–marlin limit is achieved or projected to be achieved, despite inseason increases in size limits, no Atlantic blue or white marlin would be permitted to be taken, retained, or possessed from the date at which the limit is achieved or projected to be achieved. Minimum size limits would return to the current minimum size limits at the start of the subsequent fishing year. Possession of marlin would also be permitted at the start of the next fishing year, subject to the 250–limit adjusted for any prior overharvest. Consistent with ICCAT recommendations, NMFS would subtract any overharvest from the subsequent fishing year's landing limit and may carryover any underharvest to the subsequent fishing year.

Prior to the start of each fishing year, NMFS would file with the Office of the Federal Register an action establishing the annual landing limit for recreationally-caught Atlantic blue and white marlin. The need for inseason action and the specific action taken (minimum size increase or shift to catch-and-release) would be based upon a review of landings, time remaining until conclusion of the current fishing year, current and historical landings trends, and any other relevant factors. Inseason adjustments would be made by filing an adjustment with the Office of the Federal Register. In no case should the adjustments be effective less than five days after the date of publication.

Codification of ICCAT landing limits for Atlantic blue and white marlin, as well as the attendant compliance mechanisms and carryover procedures, are anticipated to have limited positive ecological impacts, in and of themselves, given the relatively low level of known United States landings. The United States was within the marlin landing limit for two of three reported years, and the 2002 exceedence was fully offset by carrying forward prior underharvest. These regulations may prevent otherwise unrestricted future increases in mortalities associated with known landings.

Difficulties associated with quantifying current marlin landings, uncertainty regarding the number of marlin fishermen and absolute effort, and uncertainty regarding changes in angler behavior when faced with increased minimum sizes or a catch-and-release fishery make quantifying the potential socio-economic impacts of this alternative difficult. Nevertheless, NMFS believes that the proposed measures minimize the adverse socio-economic impacts by improving the likelihood of allowing marlin landings for the entire fishing year, while complying with international obligations. Impacts associated with implementation of the ICCAT landings limits are anticipated to range from none to modest, depending on catch rates, angler responses to inseason action, and inseason management measures implemented, if any. Areas that have late season fishing activity could be impacted to a greater extent by increased minimum sizes, however, these impacts are expected to be less substantial than if a total prohibition on the landing of Atlantic blue and white marlin was required to be implemented. If the ICCAT landing limit is achieved despite inseason adjustment of the minimum sizes and a total prohibition on possession and landings is implemented until new landings are available the following season, NMFS estimates that impacts for the fishery as a whole would be minor given the catch-and-release nature of the fishery and that a landings prohibition would most likely occur late in the fishing year. However, communities that might lose tournaments as a result of a landings prohibition could experience larger, localized impacts. The delay in the date of effectiveness should allow tournament operators time to adjust to the new regulations by modifying tournament rules and formats. Thus, the delay in effective date further mitigates the potential impacts of an inseason shift to catch-and-release only.

NMFS's second preferred alternative proposes to decrease landings and the mortalities associated with landings by allowing only catch-and-release fishing for Atlantic white marlin. Under this proposed management measure, no Atlantic white marlin would be taken, retained, or possessed for five years from January 1, 2007, through December 31, 2011, inclusive.

The ecological impacts of allowing only catch-and-release fishing for Atlantic white marlin would be limited to modest on its own. Known landings of Atlantic white marlin ranged between 23 and 116 fish for the period 2001 to 2003. Mortality benefits from this alternative would be expected to accrue from elimination of landed white marlin, as this alternative would not directly impact post-release mortality. However, the ecological impacts of this alternative in combination with the other preferred alternatives in this rule would likely contribute to a noticeable decrease in domestic mortality. For example, this preferred alternative coupled with mandatory use of circle hooks when using natural baits in billfish tournaments could substantially reduce mortality by reducing landings to zero and reducing the post-release mortality rate by 23 percent overall or 65.7 percent relative to J-hooks.

The ecological benefits of this preferred alternative for other species may vary in response to angler behavior. If anglers continue catch-and-release fishing for white marlin, there would likely be little change in impacts on other species. However, anglers can shift effort to target other species, such as sailfish, blue marlin, dolphin, and wahoo, to some extent. If this occurs, interactions with those species could increase.

NMFS anticipates that any adverse socio-economic impacts stemming from this alternative would be small relative to the fishery as a whole, but would likely be heightened in localized areas. The primarily catch-and-release nature of fishing for Atlantic white marlin (approximately 90 to 99 percent of

white marlin are released), along with the availability of other billfish species for landing and the limited duration of the measure (five years), would be expected to minimize and mitigate overall adverse impacts. NMFS acknowledges that some fishery participants and operators may be unwilling to shift to a catch-and-release format, and as such, NMFS estimates that this alternative could result in the cancellation of between one and four tournaments, as well as the loss of between 69 and 1,213 charters (there are approximately 11,447 billfish charters and over 400,000 charter for all species). Losses of these magnitudes would be minor to modest for the fishery as a whole, but would likely be heightened for the local communities in which they may occur. Further, the proposed delay in effective date would likely allow tournament operators and anglers sufficient time to adjust to new requirements, thus further mitigating any adverse socio-economic impacts.

NMFS also considered: (1) A no action alternative; (2)establishing larger minimum size limits for Atlantic blue and white marlin; (3) implementing a recreational bag limit of one Atlantic billfish per vessel per trip; and (4) allowing only catch-and-release fishing for Atlantic blue marlin. The no action alternative would maintain the current recreational minimum size measures that provide some limits on fishing mortality. The no action alternative would not address post-release mortality of Atlantic billfish in the recreational fishery, which is now estimated to be significantly higher for white marlin than it was when Amendment 1 to the Atlantic Billfish FMP was published in 1999.

While providing some additional conservation benefit to these overfished species, the second alternative by itself would have limited ecological benefit because minimum size limits alone cannot directly address post-release mortality issues or directly limit effort. In addition, further reductions from the already low level of known domestic landings would provide only limited mortality benefits.

The third alternative, while potentially restricting occasional landings of more than one billfish from a single trip, would provide only limited mortality reductions because bag limits cannot directly limit post-release mortality and fishing trips landing multiple billfish are rare events.

The fourth alternative could provide some positive ecological benefits for Atlantic blue marlin, but could have noticeable adverse socio-economic impacts on fishery participants and associated shore side businesses.

The suite of preferred gear and landings alternatives to reduce billfish mortality by the directed fishery are expected to achieve the goals and objectives of this rulemaking at this time. However, the non-preferred alternatives may be considered in a future rulemaking, if necessary and appropriate.

3. Management Program Structure

NMFS considered the alternatives described below in order to clarify existing regulations and improve management of Atlantic HMS. In and of themselves, many of these actions would have few ecological, social, and/or economic impacts. However, all should improve the management of Atlantic HMS.

A. Bluefin Tuna Quota Management

The suite of management measures proposed at 50 CFR 635.27 for the management of BFT are not likely to have any ecological impacts. The quotas themselves are established by ICCAT, in accordance with the BFT 20-year rebuilding plan. All of the alternatives considered, which modify how the quota is allocated among domestic fishermen, maintain the current ICCAT-recommended quota. These proposed small orders of change, quantified in either numbers of fish or in weight (metric tons), or time and/or location of harvest, compared to overall U.S. harvest levels, equate to ecological impacts that are unlikely to be measurable in terms of variability in the data used to conduct the BFT stock assessment. The goal of these alternatives is to clarify both the regulations and NMFS' responses to the inherent variability of the fishery in order to minimize any social or economic impacts. The management measures are split into three sections: time-periods and subquotas, annual quota allocations and effort controls, and inseason management.

i. Time-periods and Subquotas

NMFS explored several possibilities for amending and/or clarifying the annual BFT subquota allocation schemes in both the General and Angling categories. Currently, using the ICCAT-recommended U.S. BFT TAC, NMFS divides the U.S. allocation into several domestic quota categories, which are then further subdivided into more finite temporal, geographic, and/or BFT size class categories to meet the objectives of the Magnuson-Stevens Act, ATCA, and the FMP. NMFS proposes to codify specific General category time-periods and associated subquotas (in percentage and whole weight) in the regulatory text. NMFS is proposing in this rule to codify the following time-periods and subquota allocations: June - August, 50 percent (345 mt); September, 26.5 percent (182.8 mt); October - November, 13 percent (89.7 mt); December, 5.2 percent (35.9 mt); and January, 5.3 percent (36.5 mt). NMFS also proposes to clarify the procedures for calculating the Angling category school size-class BFT subquota allocation. Finally, NMFS is proposing to remove the north/south Angling category dividing line and the General Category New York Bight set-aside, which are not effective management tools at this time.

These preferred alternatives enhance NMFS's ability to address the inherent variability in the BFT fishery. These alternatives also respond, in part, to the North Carolina Division of Marine Fisheries's (NCDMF) petition for rulemaking (November 18, 2002; 67 FR 69502) by proposing to allow for a General category winter BFT fishery while still recognizing the historical General category BFT allocation schemes.

In addition to these preferred alternatives, NMFS considered maintaining the current time-periods, subquota allocations, and geographic set-asides for the General and Angling categories as established in the 1999 FMP (the no action alternative). This alternative hinders NMFS' ability to adapt BFT management measures to account for variations inherent in the fishery. Additionally, the current regulations do not allow for a winter BFT fishery in the South Atlantic region. The General Category New York Bight set-aside has not been used in the past several years. This geographic set-aside tends to complicate the subquota allocation of the General Category quota and creates the misperception that geographic set-asides are an effective management tool in a dynamic fishery. The recreational north/south line creates the perception that NMFS has the ability to use this management tool to provide fair and equitable recreational fishing opportunities. However, NMFS does not currently have the necessary real-time data for this to be an effective management tool.

NMFS also considered an alternative that would establish the General category time-periods, subquotas, and geographic set-asides annually via framework action(s). This alternative would increase the administrative burden to implement the annual specifications prior to the start of the fishing year, and would not provide the

industry with the necessary stability to plan for the upcoming fishing year.

Finally, NMFS considered three different alternatives for allocating the General category time-periods and subquota allocations. None of these alternatives were selected because the allocations did not adequately balance the need to preserve historical General category BFT allocations, to the extent practicable, while providing for a formalized winter BFT fishery in the South Atlantic.

ii. Annual Quota Allocations

According to an ICCAT recommendation, if a Contracting Party exceeds the annual or biannual BFT quota, then the Contracting Party must reduce its catch to compensate for the overage. ICCAT eventually modified this recommendation to state that unused quota or an overage from the previous year shall be added or subtracted, as appropriate, to the current year's retainable catch. To maintain consistency with the ICCAT recommendations while streamlining the annual domestic BFT quota adjustment process, NMFS considered several alternatives.

Under the preferred alternative, NMFS would modify the current procedures to calculate annual under- and overharvest adjustments so that the analysis of the baseline quota and subquotas occur only when ICCAT alters the recommended U.S. BFT TAC. Additionally, NMFS proposes to establish a carryover limit for each category equaling no more than 100 percent of that category's baseline allocation for the individual quota category (i.e., no more than the baseline allocation would be allowed to roll from one year to the next), and to authorize the transfer of any category's quota that exceeds this limit to the Reserve category or another domestic quota category, while maintaining the status quo overharvest provisions. This preferred alternative would have positive ecological impacts by limiting the amount of unharvested quota that could be rolled from one year to the next. This alternative would minimize the impacts of stockpiling in any one category, and provide NMFS the flexibility to redistribute the overall quota available and to provide reasonable fishing opportunities to harvest the overall quota in the timeframe it was designated. Under these preferred alternatives, NMFS could provide the fishery with a stable baseline quota allocation on a timely basis from one year to the next; address under- and overharvests from the previous year; establish the General category effort controls and any recreational and commercial handgear daily retention limits for the upcoming season; enhance flexibility to adapt these management measure, if warranted; and streamline the annual rulemaking process. Additionally, implementing a cap on the amount of quota that can be carried over to the next fishing year would allow NMFS to manage the BFT harvest with more finite precision and minimize the occurrence of ''stockpiling'' in any one quota category.

NMFS considered two other alternatives to modify the annual BFT management measures. Under the no action alternative, NMFS would continue to conduct a full analysis of the impacts of implementing the baseline quotas every year regardless of whether ICCAT recommended any changes to the BFT TAC. NMFS also considered eliminating the carryover provisions for unharvested quota where the unharvested quota would not be transferred to another category. Rather, that portion of the quota would remain unharvested. Under this alternative, the overharvest provisions would maintain the status quo.

iii. Inseason Management

NMFS currently performs inseason management actions to adjust BFT management measures, such as daily retention limits, inseason quota transfers, and fishery closures/reopenings to the adapt to the changing conditions of each fishing season. Prior to making an inseason adjustment, NMFS must consider a set of criteria to ensure the actions comply with the objectives of the FMP. NMFS considered maintaining the existing inseason action procedures (no action alternative), which include analyzing different sets of criteria for each particular type of inseason action. Under the preferred alternative, NMFS would have a set of consistent criteria at 50 CFR 635.27(a)(8) to apply to all types of inseason actions for BFT. The proposed criteria are essentially the same as the current regulatory text at §§ 635.27(a)(7) and 635.28(a)(3) with some revision to eliminate overlapping considerations. This alternative would ensure reasonable fishing opportunities for all of the BFT fishery participants. Allowing for these opportunities is considered when establishing the baseline quota and should not have any additional ecological impacts. These criteria provide the necessary tools for meeting the draft HMS FMP's objectives in a consistent manner, while balancing the resource's needs with users' needs. Further, the criteria would allow NMFS to adapt management measures to the inherent variability in the fishery and to provide for maximum utilization of the BFT quota. The preferred alternative provides transparency and consistency in the conditions considered prior to taking action. Because there are several sets of criteria to consider before taking action, the no action alternative is not as transparent as the preferred alternative and could lead to inconsistencies in analysis between the types of inseason actions.

NMFS also considered an alternative that would eliminate BFT inseason actions. While this alternative would simplify management, eliminating inseason actions would constrain NMFS's ability to adjust management actions due to fluctuations in catch rates and to prevent premature closures or overharvest of a domestic quota category. Because this type of variability or lack of variability is considered when setting the overall TAC, this alternative is unlikely to have any ecological impacts.

B. Timeframe for Annual Management of HMS Fisheries

Many aspects of HMS management, including quota distributions and specifications, are implemented on an annual basis. This proposed rule considers three alternatives to modify the current management timeframe for HMS fisheries with the intent of simplifying the HMS management process. The no action alternative maintains the status quo, with sharks managed on a calendar year (January 1 - December 31) and tunas, swordfish, and billfish managed on a June 1 through May 31 fishing year. The preferred alternative would shift HMS management to a calendar year. A third alternative would shift all HMS fisheries to a June 1 - May 31 fishing year management cycle.

Under the preferred alternative, the Atlantic shark management timeframe would remain as it currently is (calendar year), whereas tunas, swordfish, and billfish would shift from a June 1 - May 31 fishing year to a calendar year. An abbreviated 2006 season from June 1 through December 31, 2006, would be established to transition bluefin tuna and swordfish from a fishing year to a calendar year. The specifics of the abbreviated season for bluefin tuna and swordfish would be implemented under a future fishery specification process, as appropriate.

The preferred alternative would simplify the regulatory process by managing all HMS fisheries on a calendar year. Currently, reports of U.S. landings are presented to ICCAT on a

calendar year basis while reports of quota under- and overharvests are analyzed on a fishing year basis. Thus, this alternative would simplify reports to international forums. Additionally, this alternative would strengthen our negotiating position during international compliance reviews by providing matching and transparent reports. While this alternative might cause some short-term confusion for fishermen who have adjusted to the June 1 to May 31 fishing year, in general this alternative is expected to simplify the management regime overall. When implemented in conjunction with the ICCAT landing limit for marlin, this alternative could shift potential negative impacts as a result of the ICCAT landing limit from the end of the fishing year (approximately May) to the end of the calendar year (approximately August through December). However, the likelihood of any impact is low because the ICCAT landing limit has rarely been reached.

Under the no action alternative, Atlantic tunas, swordfish, and billfish would continue to be managed on a June 1 - May 31 fishing year timeframe, and Atlantic sharks would continue on a calendar year basis. This alternative was not selected as the preferred alternative because it does not meet the intent of simplifying HMS management.

In addition, NMFS considered shifting all of the HMS fisheries to the June 1 - May 31 fishing year management timeframe. The management timeframe for Atlantic tunas, swordfish, and billfish would remain as is, whereas sharks would shift from the calendar year to the fishing year. This alternative is not preferred because it would not simplify international reporting and could cause short-term confusion in the shark fishery, which has operated on a calendar year basis since 1993.

C. Authorized Fishing Gears

The revised list of authorized fisheries (LOF) and fishing gear used in the listed fisheries became effective on December 1, 1999 (64 FR 67511). The rule applies to all U.S. marine fisheries, including Atlantic HMS. As stated in the rule, ''no person or vessel may employ fishing gear or participate in a fishery in the exclusive economic zone (EEZ) not included in this LOF without giving 90 days advance notice to the appropriate Fishery Management Council (Council) or, with respect to Atlantic HMS, the Secretary of Commerce (Secretary).'' The LOF is updated periodically and can be found at 50 CFR 600.725.

Innovative fishing gears and techniques are essential to increasing efficiency and reducing bycatch in fisheries for Atlantic HMS. 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. New fishing gears and techniques need to be evaluated by NMFS for qualification as authorized gear types.

In this rule, NMFS is proposing at 50 CFR 635.21(e) and (f) to authorize speargun fishing gear as a permissible gear-type in the recreational Atlantic tuna fishery, authorize green-stick fishing gear for the commercial harvest of bigeye, albacore, yellowfin, and skipjack (BAYS) tunas, authorize buoy gear in the swordfish handgear fishery, and clarify the allowance of hand-held cockpit gears.

At the public hearings on the proposed list of authorized gears in the Atlantic tuna fisheries, no comments were received from spearfishermen and the regulations were made final without listing speargun fishing gear as an authorized fishing gear. Since implementation of the final rule, NMFS has received written requests and public comment requesting that NMFS authorize the use of speargun fishing gear in the Atlantic tuna fishery. The public comments suggest that relatively few individual fishermen compared to the number of existing angling permit holders (approximately 22,000) would be expected to use this gear type, and that spearfishermen expect low encounter rates with target species. Based on public comment and anecdotal information, NMFS anticipates that between 50 and 1,000 individual U.S. fishermen may have an interest in using speargun fishing gear to target tunas. Relative to the current number of participants in the recreational Atlantic tuna fishery, and taking into account the estimated low encounter rates for target species, the additional anticipated effort from spearfishermen would likely result in minimal negative ecological impacts on Atlantic tunas.

The authorization of speargun fishing gear in the recreational Atlantic tuna fishery would likely result in minor positive economic impacts. Under the preferred alternative, tunas taken with speargun fishing gear in the Angling category would not be eligible for sale. However, for consistency purposes, vessels that possess an Atlantic HMS charter/headboat (CHB) permit would be allowed to sell their recreational Atlantic tunas, except for BFT, while on a for-hire trip, provided they do not exceed the daily recreational retention limits for any BAYS tunas and abide by sale restrictions as outlined in 50 CFR 635.31. Regardless of whether CHB fishermen are operating in a for-hire or non-for-hire manner, BFT harvested by speargun fishing gear may not be sold. The CHB sector may experience some positive economic impacts as spearfishermen may increase their use of for-hire vessels, increasing revenues to those vessels. Prohibiting the sale of BFT taken with spearfishing gear from CHB vessels could result in some perceived negative social and economic impacts. However, this activity is not currently allowed under existing regulations, therefore no additional adverse social or economic are anticipated for the CHB sector. Additionally, the authorization of spearfishing gear could increase the club-nature or camaraderie associated with spearfishing and may result in positive social impacts.

NMFS is proposing at 50 CFR 635.21(e) to authorize green-stick fishing gear for the commercial harvest of Atlantic BAYS tunas. Commercial vessels utilizing or possessing green-stick gear would be prohibited from possessing or retaining BFT. There is a potential for increases in landings of other Atlantic HMS, but NMFS cannot quantify anticipated landings for this gear, at this time, due to the limited amount of landings information available. However, because this gear has been used in the HMS fisheries for several years but classified as longline (due to the number of hooks involved) or handgear (due to the use of rod and reel), authorizing this gear type would likely not result in increased effort, landings, or landing rates. The authorization of green-stick gear may result in positive social and economic impacts for those fishermen who wish to employ the gear to target BAYS tunas commercially. This gear type is fairly selective for BAYS tunas because of the fishing technique. As such, the gear is unlikely to interact with any sea turtles or other protected species. An increase in BAYS tuna landings could provide positive economic impacts to fishermen as well as benefits for fish houses, gear supply houses, and other associated businesses. Some commercial tuna fishermen utilizing green-stick gear may experience negative social and economic impacts due to the prohibition on the possession or retention of BFT, however, since available data indicate that few BFT have been reported captured using this gear type, NMFS anticipates that any negative impacts would likely be minor.

Vessels using green-stick gear and fishing under the General category would continue to be subject to the General category regulations (such as size limits), while vessels with pelagic longline (PLL) gear onboard would be subject to all current PLL regulations, including gear restrictions (such as circle hooks) and closed areas.

NMFS is also proposing to authorize buoy gear in the commercial swordfish handgear fishery, as reflected in proposed regulatory changes to 50 CFR 600.725(v), 635.2, and 635.21(e)(4). Under current regulations, the swordfish handgear fishery may utilize individual handlines attached to free-floating buoys. This rule proposes to require that handlines used in HMS fisheries be attached to a vessel (see Regulatory Housekeeping Measures below). Further, this rule proposes to change the definition of individual free-floating buoyed lines, that are currently considered to be handlines, to ''buoy gear,'' allowing the commercial swordfish handgear fishery to continue utilizing this gear type. This rule would also limit the number of buoys that can be deployed to 35 buoys per vessel and require that each buoy have fixed monitoring equipment such as radar reflectors, beeper devices, lights, or reflective tape with a spotlight on the vessel in order to facilitate finding the gear. This preferred alternative would likely continue affording positive social and economic benefits to current fishery participants. Currently, a maximum of 282 permit holders (93 swordfish handgear and 189 swordfish directed) would be authorized to utilize this gear type to target swordfish. This alternative could result in perceived negative social impacts by recreational fishermen by continuing to allow commercial swordfish fishing in areas closed to HMS pelagic longline gear.

Additionally, NMFS is preferring an alternative to clarify the use of secondary hand-held cockpit gears at 50 CFR 635.21(b) and (e). These gears may include, but are not limited to, dart harpoons, gaffs, flying gaffs, tail ropes, etc., and are used at boat side for subduing HMS captured on authorized primary fishing gears. In recent years, NMFS has become aware of some confusion regarding the allowable use of hand-held cockpit gears. In 50 CFR 635.21(e), NMFS lists the authorized primary fishing gear types that Atlantic HMS permit holders are allowed to use, based on the species being targeted and the permit category of the particular vessel. It is NMFS' intent to authorize only the primary fishing gear types used to harvest HMS, meaning the gears used to bring an HMS to the vessel. This alternative would clarify that secondary gears could be used to subdue HMS after they are brought to the vessel using a primary gear type. Under this proposed action, cockpit gears would not be allowed to be used in any way to capture free-swimming HMS, but only to gain control of HMS brought to the vessel via an authorized primary fishing gear type.

In addition to a no action alternative, NMFS also considered alternatives to authorize speargun fishing gear as a permissible gear-type in both the commercial tuna handgear and the recreational Atlantic tuna fisheries, and to authorize buoy gear in the commercial swordfish handgear fishery and limit vessels to possessing and deploying no more than 50 buoys with each buoy having no more than 15 hooks or gangions attached. NMFS did not prefer authorizing speargun fishing gear in the commercial tuna handgear fishery because, according to feedback received from HMS Advisory Panel (AP) members and the estimated low encounter rates, NMFS does not believe the commercial handgear sector would utilize this gear type. NMFS did not prefer the authorization of buoy gear with limits of 50 buoys possessed or deployed and up to 15 hooks or gangions attached to each gear because of potential negative ecological and social impacts such as lost gear.

D. Regulatory Housekeeping Measures

The proposed actions referred to as ''regulatory housekeeping measures'' include several minor revisions to existing regulatory text and 11 substantive actions. The minor revisions include: minor and nonsubstantive clarifications to reporting, permitting, and vessel upgrading requirements; and removal of duplicative reporting requirements, obsolete cross-references, and expired regulations. Also, the title of the ''Northeast Distant closed area'' is proposed to be changed to the ''Northeast Distant gear restricted area'' to reflect recent regulatory actions. See Section 2.3.4.1 of the draft HMS FMP for a table describing these minor revisions. In addition, NMFS is proposing a change to 50 CFR 635.4(f)(1) to include a rebuttable presumption that a vessel that possesses swordfish in excess of recreational retention limits intends to sell the swordfish. This change would make § 635.4(f)(1) consistent with shark provisions at § 635.4(e)(2), and shift the burden of proof to the vessel to show compliance with applicable regulations. This change would facilitate enforcement and would not impose any additional economic impacts on fishermen. As all of the above changes are minor technical additions, corrections, or changes to existing regulations, per the NOAA Administrative Order 216–6, they are categorically excluded from the requirement to prepare and Environmental Assessment or EIS.

For the 11 more substantive proposed measures, alternatives have been developed and analyzed. Several of these alternatives would not implement new regulatory requirements and include: (1) a clarification that the sale or purchase of HMS in excess of current retention limits is prohibited; (2) a correction to a coordinate specified for the East Florida Coast closed area that would extend it 1.02 km (0.55 nm) eastward to the outer boundary of the EEZ to match with the list of coordinates given; (3) a measure to reinforce and clarify the recreational nature of the billfish fishery by prohibiting vessels issued commercial permits from possessing billfish; (4) a measure to provide an option for Atlantic tunas dealers, who engage in both domestic and international trade of HMS (see 50 CFR part 300 subpart M and 50 CFR part 635), to submit required BFT reports using the Internet once a system is designed and put in place; (5) a clarification of the deadlines for submitting ''no-fishing'' and ''cost-earnings'' reporting forms; (6) a clarification that vessel owners, not anglers, must report non-tournament recreational swordfish and billfish landings; and (7) a clarification to the procedure for specifying the annual 25 mt northeast distant (NED) BFT PLL allocation. The preferred alternatives described above are expected to produce minimal positive ecological impacts, with no significant adverse social or economic impacts. Extending the East Florida Coast closed area by 1.20 km (0.55 nm) is not expected to impact fishing effort, as vessels will likely relocate to nearby areas with similar catch rates. In summary, these alternatives are preferred over the no action alternatives because they would improve compliance by reinforcing and clarifying existing regulations and facilitate modernized reporting procedures. Unlike the above alternatives, several regulatory housekeeping measures would implement new regulations and are discussed in more detail below.

The HMS time/area closures currently in effect apply specifically to either PLL or bottom longline (BLL) gear. Therefore, it is optimal for the two gear types to be clearly differentiable to determine compliance with the applicable restrictions. NMFS has developed alternatives to amend the

definitions for pelagic and bottom longlines, or establish additional restrictions on these gears when fishing in the time/area closures. The preferred alternatives would limit the amount of floats and pelagic species that may be possessed on BLL vessels when fishing in PLL closed areas. Similarly, the preferred alternatives set a minimum number of floats and limit the amount of demersal species that PLL vessels may possess when fishing in BLL closed areas. The preferred alternatives are not expected to create significant adverse economic and social impacts. Both limits (float numbers and species composition) were chosen because they are consistent with the vast majority of commercial fishing operations. There may be some minor adverse economic impacts on vessels that deploy unusual numbers of floats or that fish for both pelagic and demersal species on the same trip, but those are expected to be rare occurrences. The preferred alternatives would improve monitoring and compliance with HMS closed area regulations. Thus, the ecological benefits associated with HMS closed areas are expected to remain intact or be strengthened. An alternative to require time/depth recorders on longlines was not preferred because it would impose larger negative social and economic impacts than the preferred alternatives, and would require precise information on longline location and water depth to determine compliance. An alternative to close areas to both types of gear would have the largest ecological benefits, not considering redistribution of effort, but it could also impose the largest adverse social and economic impacts.

Species identification of sharks can be enhanced by the presence of fins. NMFS considered alternatives to amend the regulations governing commercial shark landings to facilitate shark identification for enforcement and data collection purposes. The preferred alternative would require that the second dorsal and anal fins remain on all sharks through landing. Although this alternative could have some minor economic and social impacts, it is expected to have ecological benefits and, in the long-term, aid in rebuilding the large coastal shark population. NMFS also considered an alternative that would require these fins to remain on all sharks, except for lemon and nurse sharks, through landing. This alternative would have similar economic and social impacts as described above, but could confuse the issue of identification because fishermen could remove all fins from a shark log and, incorrectly, report the shark as a nurse or lemon shark. If fishermen were to do this, the alternative might have adverse ecological impacts compared with the no action or the preferred alternative. Another alternative was considered that would require the retention of all fins on all sharks through landing. This alternative would have the largest ecological benefits but could also have fairly large adverse economic and social impacts. Therefore, it was not preferred.

Currently, handlines are not required to be attached to, or in contact with, vessels. As a result, some vessel operators have been deploying numerous unattached handlines. This practice may circumvent the original ''concept'' of handline gear and could potentially result in an unintended increase in fishing effort. NMFS is preferring an alternative that would require that handlines be attached to, or in contact with, vessels. However, as described under Authorized Fishing Gears (above), NMFS prefers an alternative that would define unattached handlines as ''buoy gear,'' and authorize their use in the commercial swordfish handgear fishery. As a result, the preferred alternative in this section would primarily impact recreational fishermen and commercial fishermen that do not possess a directed commercial swordfish permit. There are no data indicating the prevalence of this practice, but public comment suggests that the use of unattached handlines may be increasing in the recreational sector. Therefore, this alternative could create some minor adverse social impacts on the recreational sector. Because fish caught recreationally cannot be sold, no direct adverse economic impacts are expected. However, some unquantifiable level of adverse economic impacts could be realized by charter vessels and gear suppliers. This alternative could produce ecological benefits by preventing uncontrolled expansion of the recreational handline fishery. The no action alternative was not preferred because it would not address the potential expansion of the handline fishery.

Currently, vessels fishing recreationally for sharks, swordfish, billfish, and tunas (in some states) are able to fish under state regulations while in state waters, and under Federal regulations when in Federal waters. This has been problematic for NMFS, and has caused confusion on behalf of anglers, due to the differences between state and Federal regulations and the inability to verify whether a fish was caught in state or Federal waters. Thus, NMFS is preferring an alternative that would require recreational vessels with an HMS Angling, HMS Charter/Headboat (on a for-hire trip), or Atlantic Tunas General Category (participating in a registered HMS tournament) Federal permit to abide by Federal regulations as a condition of their permit, regardless of where they are fishing, unless a state has more restrictive regulations. Such a permit condition is already in place for commercial shark and swordfish Federal permit holders under 50 CFR 635.4(a)(10). This alternative is expected to facilitate improved management of HMS and result in less confusion on behalf of fishermen and improved compliance. Compared with the no action alternative, the preferred alternative would produce greater ecological benefits with few resulting adverse social and economic impacts. However, the few HMS anglers who generally fish in states with less restrictive regulations would notice some adverse social impacts due to the more restrictive Federal regulations.

4. EFH Update

EFH guidance that published on January 17, 2002 (67 FR 2343), requires NMFS to periodically review and update the EFH provisions, as warranted, based on the best scientific information available. The EFH regulations further require NMFS to review all EFH information at least once every five years. EFH, including habitat areas of particular concern (HAPCs), for HMS were identified in the 1999 Atlantic Tunas, Swordfish, and Shark FMP (and its Amendment) and the 1999 Amendment 1 to the Billfish FMP. This draft HMS FMP continues the comprehensive five-year review of EFH for all HMS. This process began with the release of the Issues and Options Paper (April 30, 2004, 69 FR 23730). The purpose of the EFH review is to gather any new information and determine whether modifications to existing EFH descriptions and boundaries are warranted. While NMFS has presented new information relative to HMS EFH in the annual SAFE reports and Amendment 1 to the 1999 FMP, this is the first comprehensive look at all new information related to HMS EFH.

NMFS does not intend to modify any of the existing EFH descriptions or boundaries in this draft HMS FMP. Rather, NMFS is presenting new EFH information and data collected since 1999 and is requesting public comment on any additional data or information that may need to be included in the five-year review. Based on an assessment of the data collected thus far, NMFS has made a preliminary determination that modifying existing EFH for some HMS

may be warranted. Any modifications to existing EFH descriptions and boundaries would be addressed in a subsequent rulemaking. In order to consolidate EFH descriptions and maps previously provided in separate documents, all of the EFH descriptions and maps from the 1999 FMP, Amendment 1 to the 1999 FMP, and Amendment 1 to the Billfish FMP are provided in the draft HMS FMP. These maps include data acquired through the review process, and can be reviewed by the public to comment on the need for any additional information to be considered.

Additionally, NMFS is required to identify fishing and non-fishing activities that may adversely affect EFH. Each FMP must include an evaluation of the potential adverse impacts of fishing on EFH, including the effects of each fishing activity regulated under the FMP, other Federal FMPs, and non-federally managed fishing activities (i.e., state fisheries). FMPs must describe each fishing activity and review and discuss all available relevant information such as the intensity, extent, and frequency of any adverse effects on EFH; the type of habitat within EFH that may be adversely affected; and the habitat functions that may be disturbed (50 CFR 600.815(a)(2)). If adverse effects of fishing activities are identified, the Magnuson-Stevens Act requires that these effects on EFH are minimized to the extent practicable and alternative measures be identified to minimize these effects encouraging the conservation and enhancement of EFH (Magnuson-Stevens Act; 16 U.S.C. 1853 section 303(a)(7)).

NMFS completed the original analysis of fishing and non-fishing impacts in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks and the 1999 Amendment 1 to the Billfish FMP, and is presenting information gathered during the five-year review, including all fishing and non-fishing impacts, in the draft HMS FMP. A considerable amount of new information is available regarding gear impacts that have been incorporated into this review. For example, new information presented in the 2004 Gulf of Mexico Fishery Management Council final environmental impact statement for EFH suggests the bottom longline gear may have an adverse effect on coral reef habitat, which serves as EFH for certain reef fishes. As a result, NMFS has made a preliminary determination that some HMS gears, such as bottom longline, may have an adverse effect on EFH for other Federal and non-federally managed species. An assessment of such gears and an evaluation of any potential measures to minimize such impacts would be addressed in a subsequent rulemaking.

Withdrawal of Proposed Rule (68 FR 54410, September 17, 2003)

NMFS published a proposed rule (September 17, 2003, 68 FR 54410) to: establish an annual domestic recreational landing limit of 250 Atlantic blue and white marlin, combined; establish procedures to carry forward overharvest and underharvest of the Atlantic marlin between management periods; and clarify regulations specifying that the owner of a vessel participating in the Atlantic HMS Angling or CHB category be required to report recreational landings of Atlantic bluefin tuna, billfish, and swordfish. The intent of that proposed rule was to comply with ICCAT recommendations, improve the management and conservation of Atlantic HMS, and establish consistent HMS recreational reporting requirements to facilitate enforcement. The proposed rule was not finalized due to a need to review the methodology for calculating recreational marlin landings. As discussed above, the issues to be addressed in that rule are being addressed in this current action. NMFS is continuing to review various methodologies to identify the most appropriate approach for estimating recreational marlin landings. NMFS will provide updates on this review as new information becomes available.

Accordingly, for the reasons stated above, the proposed rule that was published in the **Federal Register** on September 17, 2003 (68 FR 54410)is withdrawn as of August 18, 2005.

Request for Comments

NMFS is requesting comments on any of the alternatives or analyses described in this proposed rule and in the draft HMS FMP. NMFS is also requesting comments on specific items related to those alternatives to clarify certain sections of the regulatory text or in analyzing potential impacts of the alternatives. Specifically, NMFS requests comments on the costs of outfitting a commercial vessel with green-stick gear. NMFS also requests comments on proxy designations for the HMS identification workshops. Specifically, NMFS would like to know who, if anyone, would be appropriate to act as a proxy for a shark dealer and what types of characteristics such a proxy should have. In order to better differentiate between pelagic and bottom longline gear in HMS closed areas, NMFS is proposing limitations on the number of fishing floats that may be possessed or deployed from longline vessels. Examples of such fishing floats include bullet floats, poly balls, high flyers, and lobster pot buoys. NMFS is specifically seeking comments on this list to determine if it is complete and/or accurate and if a definition of ''fishing floats'' in the final rule for this action is warranted. If a definition is warranted, NMFS is requesting comments on potential language for such a definition. NMFS is also specifically asking for comments regarding whether or not the indicator species proposed to be listed at 50 CFR part 635 in tables 2 and 3 of Appendix A are appropriate.

Finally, NMFS is interested in hearing comments from the recreational fishery specifically for the proposed billfish measures. NMFS is proposing to implement the ICCAT recommended landing limit for marlin. As such, NMFS would establish the flexibility to perform inseason actions to reduce catch rates of billfish, if warranted. NMFS is specifically asking for comments regarding whether or not a minimum of five days is an appropriate amount of time to notify billfish fishery participants about inseason changes to minimum sizes and possession limits should an inseason action be necessary. NMFS is also proposing to require circle hooks with natural and natural/artificial bait combinations at billfish tournaments while still allowing J hooks with artificial bait. NMFS heard during scoping that fishermen use J hooks to troll for blue marlin and that trolling for blue marlin with circle hooks would greatly reduce blue marlin catches. NMFS is requesting comment on this proposed requirement of circle versus J hooks in billfish tournaments, the current fishing practices, and impacts on tournaments. Additionally, NMFS is proposing the catch-and-release of white marlin from 2007 through 2011. NMFS is specifically requesting comments on the impacts of the proposed catch-and-release of white marlin provision on tournaments.

Comments may be submitted via writing, email, fax, or phone (see **ADDRESSES**). Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). All comments must be submitted no later than 5 p.m. on October 18, 2005.

Public Hearings and Special Accommodations

As listed in the table below, NMFS will hold 24 public hearings to receive comments from fishery participants and other members of the public regarding

this proposed rule and the draft HMS FMP. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heather Stirratt at (301) 713–2347 at least 5 days prior to the hearing date. NMFS also tentatively anticipates holding a meeting of the HMS and Billfish Advisory Panels on October 11, 12, and 13, 2005, in Silver Spring, Maryland. The actual dates and location will be announced in a future **Federal Register** notice.

Date	Time	Location	Address
9/6/05	5:30-8:30 p.m.	New Bedford, MA	New Bedford Library, 613 Pleasant St., New Bedford, MA 02740
9/6/05	7-10 p.m.	Orange Beach, AL	Orange Beach Senior Center, 26251 Canal Rd., Orange Beach, AL 36561
9/7/05	7-10 p.m.	Narragansett, RI	Narragansett Town Hall, 25 5th Ave., Narragansett, RI 02882
9/7/05	7-10 p.m.	Port Aransas, TX	University of Texas Marine Science Institute Visitor's Center (located on Cotter St. near beach), 750 Channel View Dr., Port Aransas, TX 78373
9/8/05	7-10 p.m.	New Orleans, LA	VIET Community Center, 4655 Michoud Boulevard, Suite 17, New Orleans, LA 70129
9/8/05	7-10 p.m.	Portland, ME	Howard Johnson Plaza, 155 Riverside Street/I-95, Portland, ME, 04103
9/13/05	7-10 p.m.	West Islip, NY	West Islip Public Library, 3 Higbie Ln., West Islip, NY 11795
9/14/05	7-10 p.m.	Montauk, NY	Montauk Fire House, 12 Flamingo Avenue, Montauk, NY 11954
9/15/05	6-9 p.m.	Gloucester, MA	Gloucester Lyceum and Sawyer Free Library, 2 Dale Ave., Gloucester, MA 01930
9/20/05	7-10 p.m.	Fort Pierce, FL	Fort Pierce Library, 101 Melody Ln., Fort Pierce, FL
9/21/05	7-10 p.m.	Key West, FL	Doubletree Grand Key Resort, 3990 S. Roosevelt Blvd., Key West, FL 33040
9/22/05	7-10 p.m.	St. Thomas, USVI	Frenchman's Reef & Morning Star, St. Thomas, USVI 00801
9/26/05	7-10 p.m.	Virginia Beach, VA	Virginia Beach Pavilion Convention Center, 1000 19th Street, Virginia Beach, VA 23451-5674
9/28/05	7-10 p.m.	Charleston, SC	CCEHBR Jane's Island, 219 Fort Johnson Rd., Charleston, SC 29412
9/28/05	7-10 p.m.	Ocean City, MD	North Side Parks and Rec, 200 125th St., Ocean City, MD 21842
9/29/05	7-10 p.m.	Villas, NJ	Cape May Township Hall, 2600 Bayshore Road, Villas, NJ 082511
9/29/05	7-10 p.m.	Manteo, NC	North Carolina Aquarium Roanoke Island, PO Box 967, Airport Road, Manteo, NC 27954
10/3/05	6:30-9 p.m.	Fort Lauderdale, FL	African American Arts and Cultural Center Research Library, 2650 Sistrunk Blvd., Fort Lauderdale, FL 33311
10/3/05	7-10 p.m.	Mayaguez, PR	Mayaguez Resort and Casino, Road 104 km 0.3, Barrio Algarrobo, Mayaguez PR 00681
10/4/05	7-10 p.m.	Panama City, FL	NMFS Panama City Laboratory, 3500 Delwood Beach Rd., Panama City, FL 32408
10/4/05	5:30-8:30 p.m.	San Juan, PR	Carnegie Library (Biblioteca Carnegie), Ponce De Leon Ave. #7, San Juan, Puerto Rico 00901
10/5/05	7-10 p.m.	Madeira Beach, FL	City of Madeira Beach, 300 Municipal Dr., Madeira Beach, FL 33708
10/6/05	7-10 p.m.	Atlantic Beach, FL	City of Atlantic Beach, Atlantic Beach City Chambers, 800 Seminole Rd., Atlantic Beach, FL 32233
10/6/05	7-9 p.m.	Barnegat Light, NJ	Barnegat Light First Aid Squad, West 10th Street, Barnegat Light, NJ 08006

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq*. At this time, NMFS has preliminarily determined that the proposed rule and related draft HMS FMP are consistent with the national standards of the Magnuson-

Stevens Act, other provisions of the Act, and other applicable laws.

NMFS prepared a DEIS for the draft HMS FMP that discusses the impact on the environment as a result of this rule. A summary of the impacts of each alternative on the environment is provided above. A copy of the DEIS is available from NMFS (see **ADDRESSES**). The Environmental Protection Agency is expected to publish the notice of availability for this DEIS on or about the same date that this proposed rule publishes.

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

NMFS has prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the SUPPLEMENTARY INFORMATION section of this proposed rule. A summary of the analysis follows. A copy of the full IRFA is available (see **ADDRESSES**).

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. 603(b)(3)). 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. These are the SBA size standard for defining a small versus large business entity in this industry. A full description of the fisheries affected, the categories and number of permit holders, and registered tournaments can be found in the draft HMS FMP.

The alternatives considered for requiring attendance at workshops on protected species release, disentanglement, and identification for pelagic longline, bottom longline, and gillnet owners and operators are estimated to apply to 576 vessels permitted to fish for HMS with longline gear and 20 shark gillnet vessels. The alternatives for shark identification workshops would impact approximately 230 federally permitted shark dealers. Other alternatives considered, but not preferred, for species identification could apply to up to 980 shark, swordfish, and tuna dealers; 10,022 HMS commercial vessel owners; and 21,735 HMS angling permit holders.

The preferred time/area closure alternatives to implement complementary Madison-Swanson and Steamboat Lumps closures would apply to 576 pelagic and bottom longline permitted vessels, but would likely only impact one pelagic longline and two bottom longline sets based on past observer and logbook data. This preferred alternative would also apply to 4,029 permitted HMS charter/headboat businesses and 21,735 HMS angling permit holders. However, the impacts to charter/headboat businesses and recreational fishermen are not expected to be substantial since this alternative includes a seasonal surface trolling allowance. In addition, many of these business have already been impacted by the previously implemented Madison-Swanson and Steamboat Lumps closures established by the GMFMC, and therefore are not likely to face further economic impacts as a result of the proposed complimentary HMS closure in the same area. Other non-preferred time/area closure alternatives would apply to 576 permitted pelagic and bottom longline vessels primarily. The approximate number of vessels impacted by these different alternatives varies from as few as 20 to as many as all 177 active longline vessels (See Chapters 4 and 6 of the draft HMS FMP for the specific number of vessels estimated to be impacted by each time/area closure considered).

The preferred alternative considered for northern albacore management, which would establish the foundation for developing an international rebuilding program through ICCAT, would apply to all tuna categories, a total of 31,308 permit holders. However, the proposed alternative does not have any direct impacts on small entities in the short term because it does not require any changes to direct management measures at this time.

The preferred alternative for finetooth sharks also would not have any direct impacts on small entities but could affect 20 commercial vessels and potentially some of the 21,735 HMS angling permit holders. The non-preferred commercial management alternative, however, would apply to the estimated 20 shark gillnet vessels that are permitted and could apply to all commercial shark permit holders depending on what the management measures would be. The non-preferred recreational management alternative would apply to the 21,735 HMS angling permit holders; however, a small percentage of these recreational anglers target small coastal sharks or finetooth sharks.

All the alternatives considered regarding the directed Atlantic billfish fishery would apply to 21,735 Angling, 4,029 CHB, and up to 5,267 valid General (those participating in tournaments) category permits. In addition, there are currently 215 registered HMS tournaments that would be impacted by the proposed Atlantic billfish alternatives.

The alternatives being considered for bluefin tuna management for time-periods and subquota allocations would primarily apply to the 5,267 General category tuna permit holders. However, other bluefin tuna alternatives to streamline management processes would apply to all tuna categories, a total of 31,308 permit holders.

The alternatives that consider changing the timeframe for annual management of HMS fisheries from a fishing year to a calendar year would essentially apply to all HMS permit holders and tournament registrants. Under the preferred alternative, only the shark fishery would not be impacted by the shift in annual management timeframe because it is already managed on a calendar year basis at this time.

Several alternatives allowing or defining authorized fishing gears would apply to small entities. The proposed authorization of recreational speargun fishing for Atlantic tunas would apply to an unknown number of speargun users. This preferred alternative may also positively impact the 4,029 CHB permit holders by potentially increasing charter revenues, and it may negatively impact the current 21,735 Angling category permit holders due to potential increases in competition for the BFT Angling category quota. The non-preferred alternative to allow speargun in both recreational and commercial tuna fisheries would also apply directly to the 5,267 General category and 4,029 CHB permit holders. In addition, the preferred alternative that authorizes green-stick gear for the commercial harvest of Atlantic BAYS tunas would apply to the Atlantic Tunas Longline, General, and CHB (on non for-hire trips) category vessels, approximately 221, 5,267, and 4,029 vessels respectively. The alternatives that address the utilization of handlines would apply to 282 permit holders (93 swordfish handgear and 189 swordfish directed). The preferred alternative clarifying the authorized use of secondary cockpit gears would apply to all HMS permit holders.

Finally, a variety of regulatory housekeeping proposals would apply to small entities. Specifically, the preferred changes to the definitions of pelagic and bottom longline would apply to the 576 permitted pelagic and bottom longline vessels. The preferred alternative

requiring smaller second dorsal and anal fins would need to remain attached to the shark would apply to the 229 directed shark and 321 incident shark permit holders. The proposed HMS retention limit requirements would apply to the 540 permitted shark and swordfish dealers and the 365 permitted Atlantic tuna dealers. The change in the definition of the East Florida Coast Closed Area is unlikely to directly impact any small entities but could affect any commercial permit holders fishing in that area. The preferred alternative prohibiting the retention of Atlantic billfish by vessels issued commercial permits or outside of a tournament would apply to General category, bottom longline, and shark gillnet vessels utilizing rod and real gear, but it is unlikely that many would be impacted by this proposed regulation. The preferred alternative to amend the HMS regulations to provide an option for Atlantic tunas dealers to submit required BFT reports using the Internet would apply to the 364 Atlantic tuna permit dealer holders. The preferred alternative requiring vessel owners to report non-tournament recreational landings of North Atlantic swordfish and Atlantic billfish would apply to 4,029 CHB permit holders and 21,735 Angling permit holders, but it is not expected that this proposal would impact many entities. Finally, the preferred alternative requiring recreational vessels with a Federal permit to abide by Federal regulations, regardless of where they are fishing, would potentially apply to 21,735 Angling, 4,029 CHB, and up to 5,267 valid General (those participating in tournaments) category permits.

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 proposed alternatives, particularly time/area closures, Atlantic billfish, and authorized fishing gear alternatives. However, the proposed rule does not apply directly to them, unless otherwise noted above. Rather, it applies only to permit holders and fishermen.

None of the preferred alternatives in this document would result in additional reporting, recordkeeping, and compliance requirements that would require new Paperwork Reduction Act filings. However, some of the preferred alternatives could modify existing reporting and recordkeeping requirements (5 U.S.C. 603(b)(4)). These include workshops, coordination efforts directed at gathering additional information about finetooth shark mortality, and bluefin tuna dealer reporting.

The preferred alternatives for workshops would require recordkeeping by NMFS to record attendance at workshops and the certification status of pelagic and bottom longline vessel owners and operators, as well as shark gillnet owners and operators. Small entities would need to keep their own certificates and may decide also to keep copies of certificates for their own records. Attending workshops would also be a change in compliance.

In addition, the finetooth shark preferred alternative may expand the coverage of the current HMS observer programs. In addition, this preferred alternative would result in efforts to expand data that are currently collected by NMFS observers on shrimp trawl vessels to include finetooth shark and other HMS species of interest. Fishermen themselves would not need to change reporting.

Finally, under regulatory housekeeping, the preferred alternative to allow bluefin tuna dealers the option to report electronically once a system is developed and is made available would modify current reporting requirement, but would not result in additional reporting or burden. In fact, this option may reduce the potential need to report the same data on multiple reports for those some small entities that chose this option.

In addition to the reporting and recordkeeping requirements of the preferred alternatives, there are also proposed compliance requirements associated with the preferred alternatives. These compliance requirement include limiting billfish tournament participants to using only non-offset circle hooks when using 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.

The other preferred alternatives would change quota allocations, timeframes, authorized fishing gear types, definitions, and other management measures, but would not likely change reporting or compliance in the fishery.

Fishermen, charter/headboat operators, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, other FMPs, and Take Reduction Plans (TRPs). Other FMPs could include Dolphin-Wahoo, Coastal Migratory Pelagics, and Snapper-Grouper Reef Fish. Domestic laws include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. TRPs affecting the HMS Fisheries include Atlantic Large Whale, Bottlenose Dolphin, and Pelagic Longline plans. NMFS strives to ensure consistency among the regulations with fishery management councils and other relevant agencies. NMFS does not believe that the new regulations proposed to be implemented would conflict with any relevant regulations, Federal or otherwise (5 U.S.C. 603(b)(5)).

The proposed HMS Madison-Swanson and Steamboat Lumps time/area closure overlaps with the geographic area covered by the GMFMC regulations that also implement a time/area closure in this area. However, the GMFMC's regulations do not cover HMS permitted gear types. Therefore, the proposed HMS Madison-Swanson time/area closure regulation that affects vessels utilizing HMS gear types complements the GMFMC regulation and would help with compliance and enforcement of this time/area closure by backstopping the GMFMC's regulations to cover all federally regulated gear types.

The proposed Federal HMS permit condition requiring Federal permit holders participating in recreational trips to abide by Federal regulations in state waters, unless the state has more restrictive regulations, could overlap and/or duplicate State regulations. However, this proposed regulation would not overlap, duplicate, and/or conflict with any other Federal regulations and may reduce conflict with state regulations.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Chapters 4 and 6 of the draft HMS FMP. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c)(1)-(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) Clarification, consolidation, or simplification of compliance and reporting requirements under the rule

for such small entities; (3) Use of performance rather than design standards; and (4) Exemptions from coverage of the rule for small entities.

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, this proposed FMP would 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. Thus, there are no alternatives discussed which fall under the first and fourth categories described above. Alternatives under the second and third categories are discussed below with the alternatives that were considered but not preferred.

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, bluefin tuna quota management, timeframe for annual management, authorized fishing gears, and regulatory housekeeping measures.

The preferred alternatives for longline release, disentanglement and identification workshops, which require mandatory workshops and certification on a three-year renewal timeline for all owners and operators of HMS vessels that use longline and gillnet gear, were designed to minimize the economic impacts on fishermen, while simultaneously complying with 2003 BiOp and the post-release mortality targets for protected resources established in the June 2004 BiOp. Requiring vessel owners to attend the workshops is estimated to have an economic impact to each bottom and pelagic longline vessel owner of up to $565 and $504 in potentially lost revenue share based on 2003 logbook data, as well as unquantified travel costs to attend a workshop. The aggregate economic impact is estimated to be between $290,304 and $325,440 in the first year. Longline vessel operators would also be impacted by the preferred alternative, but it might not impact the economic well-being of the small business for which they work. In addition, the estimated twenty owners of vessels that use gillnet gear and have a Federal shark permit would each have an economic impact of up to $508 in lost revenue share based on 2003 logbook data, as well as unquantified travel costs to attend a workshop.

Specifically, under these alternatives, NMFS would 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, there would be no additional costs for workshop participants. NMFS would 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, the preferred alternatives would limit required participation in these workshops to owners and operators. It is likely that owners and operators would pass information and appropriate direction to their crew concerning release, disentanglement, and identification of protected resources. NMFS would also select a recertification period that would 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 resulting from attending a recertification workshop in person. Two, three, and five year recertification period are being considered, with a three-year period currently being preferred. 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, as well as allowing private certified trainers to provide training at tailored times and locations to minimize any costs.

Other alternatives considered were voluntary workshops for longline fishermen and mandatory workshops that would include crew in addition to owners and operators. Several alternatives would have less onerous economic impacts to small businesses relative to the preferred alternatives. These include: the no action alternative and mandatory workshops for only owners or only operators. These alternatives would not satisfy reasonable and prudent alternative under the June 2004 BiOp issued pursuant to ESA.

The preferred alternative for identification workshops, which would require mandatory workshops for all federally permitted shark dealers, is preferred 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 would 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. Similar measures as those being considered for disentanglement and identification recertification are being considered for the identification workshops for shark dealers in order to minimize the economic impacts caused by this measure.

Other alternatives in addition to the no action alternative were voluntary HMS identification workshops, mandatory identification workshops for swordfish and tuna dealers, mandatory identification workshops for all commercial longline vessel owners and operators, mandatory identification workshops for all commercial vessel (longline, CHB, General category, and handgear/harpoon) owners and operators, and mandatory identification workshops for all HMS Angling permit holders. The economic impacts of these alternatives are detailed in the draft HMS FMP. The no action and voluntary HMS identification workshop alternatives would have less onerous economic impacts relative to the preferred alternative. However, these alternatives would not address the persistent problems with species-specific shark identification in dealer reports.

In addition to the type of workshops, NMFS considered two additional renewal timetables of two and five years. A renewal timetable of five years would have a less adverse impact than the proposed timetable of three years. However, recertification every five years for bycatch release and disentanglement 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 species identification.

The preferred alternatives for time/area closures, which would implement complementary measures in Madison-Swanson and Steamboat Lumps closures and establish criteria to be considered when implementing new time/area closures or making modifications to 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. Complementary HMS regulations in the Madison-Swanson and Steamboat Lumps closures would have minimal economic impacts as from 1997 to 2003, only one pelagic longline set and two bottom longline sets were reported in these areas. All three sets occurred in the Madison-Swanson site. Four swordfish were kept on the pelagic longline set, and eight swordfish were discarded. There were no reported HMS caught on the two bottom longline sets. Recreational and charter/headboat fishing trips for HMS in the proposed marine reserves are not likely to be significantly curtailed due to the allowance for surface trolling from May through October, which are the prime fishing months. Creating these complementary HMS regulations would consolidate and simplify requirements for fishermen, and therefore simplify compliance. This alternative would also implement compatible regulations that would provide for a seasonal allowance (May - October) for surface trolling to partially alleviate any negative economic impacts associated with the closures or the HMS recreational and charter/headboat sector.

Other 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 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 closure alternatives were not preferred due to large economic impacts with conflicting ecological benefits between species. Without redistribution of effort, potential economic impacts ranged from a decline in gross fishery revenues of $299,120 to $25.8 million annually. With redistribution of effort, gross fishery revenues ranged from a decline of $820,132 to an increase of $6.0 million annually. These estimates of gross revenues lost or gained did not take into account additional costs that may be incurred as a result of relocating to new fishing grounds. The details of the economic impacts associated with these other alternatives are detailed in the draft 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 that provided some economic relief but did not meet ecological needs.

The preferred alternative to establish criteria would guide future decision-making regarding implementation or modification of time/area closures. This would provide enhanced transparency, predictability, and understanding of HMS management decisions. The time/area closure criteria would 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.

The alternative based on the petition from Blue Ocean Institute et al. 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 0.2 percent for bigeye tuna (kept) to a maximum of 29.0 percent for incidentally caught bluefin tuna (kept). 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 is 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 be a net gain in revenues for this alternative with redistribution of effort of approximately $1,651,023 annually, or $25,797 per vessel annually, primarily due to a predicted increase in swordfish landings as a result of effort being displaced into the Atlantic. Bigeye tuna landings are also predicted to increase as a result of displaced effort. The actual ecological and social impacts of the alternative would likely be in between the redistribution and no redistribution models. Due to the potential negative ecological impacts, negative economic impacts, and the increase in bluefin tuna discards, NMFS is not preferring this alternative at this time.

The preferred alternative for northern albacore tuna management, which would 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 alternative would have minimal economic impacts, because it is not proposing additional restrictions at this time. Even under an international plan, the United States is a small participant in this fishery and only has a small allocation that it does not even fully harvest 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 United States would likely not be effective in rebuilding the stock because the United States is a small participant in this fishery, and would have larger economic impacts than the preferred alternative because the rebuilding onus would fall on U.S. fishermen rather than being spread among all fishermen catching northern Albacore tuna.

The no action alternative would have the same economic impacts as the preferred alternative because NMFS has been promoting an international rebuilding plan at ICCAT. In a prior rulemaking, NMFS addressed the same northern albacore tuna alternatives but did not incorporate them into the HMS FMP. The no action alternative is rejected, because it would not include the rebuilding strategy in the FMP.

The preferred alternative for finetooth shark management was designed to address overfishing while minimizing economic impacts incurred by fishermen. This alternative would be expected to have minimal to no economic impacts, because no new restrictions are being proposed at this time. However, fishermen would be required to provide information to the observers. Long-term, the alternative would have positive ecological impacts by addressing finetooth mortality in HMS and other fisheries and positive economic impacts if the fishery is sustained.

Other alternatives considered were no action, a range of commercial management measures, and a range of recreational management measures. The range of commercial management measures could potentially include any combination of: a directed trip limit for SCS, gillnet gear restrictions, prohibiting the use of gillnet gear for landing sharks, reduced soak time for gillnets, and reducing the overall SCS quota. The range of recreational management measures could potentially include requiring the use of circle hooks when targeting SCS and/or increasing the minimum size for retention of finetooth sharks. 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 facilitate efforts to address overfishing of finetooth sharks.

The preferred alternatives for Atlantic billfish management, which include requiring the use of non-offset circle hooks when using natural baits in tournaments, implementing the ICCAT marlin landings limits, and allowing only catch-and-release fishing for Atlantic white marlin from 2007–2011 were designed to minimize economic impacts incurred by recreational fishing sector, while simultaneously enhancing the management of the directed Atlantic billfish fishery. Specifically, requiring circle hooks would likely have a minimal economic impact, since it would not affect all billfish recreational anglers, only tournament participants. Therefore, the impacts on hook manufactures, retailers, and anglers would likely be limited given that J-hooks would continue to be permitted outside of tournaments and within tournaments with artificial lures. In addition, delayed implementation to 2007 would help lower any potential economic impacts due to supply and demand changes. Impacts on tournaments would also 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 alternative would 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 implementing the ICCAT landing limit. The use of three separate levels of management measures based upon marlin landing thresholds diminishes the economic impacts of this alternative. When it is not expected that marlin landings will approach the threshold for action, then no in-season actions would occur and there would not be any economic impacts. If the threshold for action were achieved, minimum size requirements for Atlantic marlins would increase to a level sufficient to curtail landings. Finally, if the ICCAT landing limits were achieved in any one year, the fishery would shift to a catch-and-release only fishery for the remainder of that year. This last scenario would be unlikely given historical landings and minimum size requirements that would occur at the action threshold. This alternative would allow the response to be tailored to the needs of a given fishing year to ensure maximum utilization of the ICCAT landing limit. Under the calendar year management alternative that is currently preferred, implementing the ICCAT landing limit also would 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 length of the fishing year. This alternative is estimated to potentially result in $1.3 to $2.7 million in economic impacts as compared to the $13.4 to $20.0 million in impacts for catch-and-release only for Atlantic blue and white marlin resulting in an estimated one to two tournament cancellations and unquantified impacts on CHB businesses.

Catch-and-release of white marlin could result in some potential economic impacts. Any negative impacts would likely be reduced if vessels targeting white marlin already practice catch-and-release fishing and participate in catch-and-release tournaments. To mitigate negative socioeconomic impacts, NMFS would delay implementation of catch-and-release-only fishing requirements to allow the fishery time to adjust to new measures, and includes a sunset provision five years from implementation of catch-and-release requirements. NMFS estimates that this alternative could result in between $70 thousand and $1.2 million in lost revenues to CHB vessels and $1.3 to $5.5 million in negative economic impacts (in comparison to $13.4 to $18.8 million for an alternative of catch-and-release only for Atlantic blue marlin) resulting from potentially cancelled HMS tournament cancellations.

Other alternatives considered were no action, limiting all participants in the Atlantic HMS recreational fishery to using only non-offset circle hooks when using 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, 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 preferred alternatives. However, the no action alternative would not satisfy the requirements and goals of implementing the ICCAT recommendations under ATCA and furthering rebuilding of Atlantic blue and white marlin under the Magnuson-Stevens Act, or the objectives of the FMP.

The preferred alternatives for bluefin tuna 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 bluefin tuna 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 preferred alternatives were designed to minimize economic impacts incurred by fishermen, while simultaneously enhancing and clarifying bluefin tuna quota management and inseason actions.

Revising the General category time-periods and subquotas would strike a balance between providing consistent quota allocations and having the flexibility to amend them in a timely fashion. This alternative would slightly reduce General category quota from early time periods, thereby allowing for a formal winter General category bluefin tuna fishery to take place during the months of December and January, and therefore would increase 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 would be mitigated by the increased revenue generated in the later time-period. In addition, the fishermen from the Northeast are not precluded from fishing in southern areas during winter bluefin tuna season.

Clarifying the procedures that NMFS uses in calculating the ICCAT recommendation regarding the eight percent tolerance for BFT under 115 cm would simplify the regulations; this alternative would also remove the north/south dividing line that separates the Angling category. Due to the lack of real-time data currently, the north/south dividing line has not been effective in recent years, and therefore it would be removed under this preferred alternative. This alternative is not likely to have an economic impact.

Eliminating the need to allocate each domestic quota categories' baseline allocation each year would 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.

Limiting the annual carryover for each category would have some economic impacts as a result of limiting the amount of underharvest of the bluefin tuna quota that could be rolled over from one year to the next within a category. However, this alternative 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.

Consolidating the criteria to make inseason actions would result in slightly more positive economic impacts as the regulations would be consistent regardless of what type of inseason action is being considered. This would minimize confusion and provide additional transparency to the management process.

Other alternatives considered 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 further relative to the preferred alternatives.

The preferred alternative for the timeframe for annual management of HMS fisheries, which would shift the time frame to a calendar year (January 1 to December 31), was designed to minimize economic impacts on HMS fisheries and simplify HMS fishery management and reporting to ICCAT. This alternative would not impact 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 bluefin tuna as discussed above 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 preferred alternatives for billfish 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 bluefin tuna and swordfish, the 2006 fishing year would be abbreviated from June 1, 2006, through December 31, 2006, which could provide slightly higher quotas during that time period and slight positive impacts for fishermen. The specifics of this abbreviated season would be implemented under a separate action.

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 the preferred alternative; however, they would not meet the objectives of this action.

The preferred alternatives for authorized fishing gears, which would authorize speargun fishing in the recreational Atlantic tuna fishery, authorize green-stick gear for the commercial harvest of Atlantic BAYS tunas, authorize buoy gear for the commercial swordfish fishery, and clarify the allowance of hand-held cockpit gear, were designed to reduce the economic impacts to fishermen and even enhance economic opportunities in recreational and commercial fishing. Specifically, allowing speargun gear would enhance economic opportunities in the tuna recreational fishery by including a new authorized class of recreational fishing, speargun fishing.

Specifically authorizing green-stick gear would clarify current requirements. This gear is currently being utilized, however, there is uncertainty under current regulations as to whether this gear type is authorized. The preferred alternative would eliminate this uncertainty and enhance economic opportunities by authorizing this gear type.

The swordfish handgear fishery may currently utilize individual handlines attached to free-floating buoys, however, a preferred alternative would require that handlines used in HMS fisheries be attached to a vessel. This alternative would change the definition of individual free-floating buoyed lines, that are currently considered to be handlines, to ''buoy gear,'' allowing the commercial swordfish handgear fishery to continue utilizing this gear type. This alternative would explicitly authorize buoy gear but limit vessels to possessing and deploying no more than 35 individual buoys with each having no more than two hooks or gangions attached. The economic impact of this alternative would 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.

Finally, NMFS is also preferring an alternative that would likely reduce confusion over the allowable use of secondary cockpit gears to subdue HMS captured on authorized fishing 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 in both the commercial tuna handgear and recreational tuna fisheries and authorizing buoy gear in the commercial swordfish handgear fishery with 50 buoys with 14 hooks each. None of the non-preferred alternatives would have less economic impacts than the preferred alternatives.

The preferred alternatives 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 preferred alternatives that differentiate between BLL and PLL gear by using the number of floats and the species composition of catch landed would more clearly define the difference between BLL and PLL gear using a combination of gear configuration and performance standards based on the composition of catch landed. This would 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 proposed BLL and PLL gear specifications and performance standards. This performance based standard could adversely impact those longline vessels that regularly target both demersal and pelagic species on the same trip. Other alternatives considered in addition to the no action alternative were to 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 alternatives. However, the no action alternative would not address NMFS' concerns with differentiating

between bottom and pelagic longline gear.

The preferred alternative for shark identification, which would require that the second dorsal fin and anal fin remain attached on all sharks, addresses issues associated with shark species identification, but would be flexible enough to still 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 all fins on all sharks be retained. Some alternatives could have less economic impacts relative to the preferred alternative. These include the no action alternative and the alternative requiring the dorsal and anal fin on all sharks except lemon and nurse sharks. These alternatives, however, would not satisfy enforcement and species identification needs.

The preferred alternatives that prohibit the purchase or sale of HMS from vessels in excess of retention limits would enhance compliance with current regulations by consolidating the requirement for both vessels and dealers. These alternatives would 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.

The preferred alternative that would amend the Florida East Coast closed area would clarify the regulations regarding this closed area and make them consistent with the boundary of the EEZ. The only additional alternative considered was no action. Neither alternative is expected to have any economic impact since fishing activity is likely to be limited in this small area.

The preferred alternative that would amend the definition of handline gear to require that they be attached to a vessel, would clarify the definition of handline. The economic impact of this new definition would be minimal since unattached handline gear would be defined as ''buoy gear.'' Other alternatives considered were no action and to require handlines be attached to recreational vessels only. These two alternatives could have less economic impacts relative to the preferred alternative, but they would not meet the ecological objectives of this document.

The preferred alternative that prohibits commercial vessels from retaining billfish would not have any economic impacts because current regulations do not allow these vessels to sell the billfish that are landed. This alternative would clarify and consolidate the requirements for commercial vessels to make them consistent with the regulations prohibiting vessel with pelagic longline gear from retaining billfish. The only other alternative considered was no action, which could have less social impacts than the preferred alternative but it would not satisfy ecological needs of rebuilding billfish stocks.

The preferred alternative that allows Atlantic tuna dealers to submit reports using the Internet, would simplify reporting and potentially reduce costs. The other alternatives considered were no action and providing BFT dealers the option to report online (with specific exceptions) would not result in less economic burden than the preferred alternative.

The preferred alternatives that require the submission of no fishing and cost-earnings reporting forms would clarify current regulations and potentially enhance compliance. The other alternative considered was no action; that alternative would not meet NMFS' objectives to collect quality data to manage the fishery. Neither alternative is expected to have any economic impacts.

The preferred alternative that requires vessel owners to report non-tournament recreational landings would 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 FMP.

NMFS also prefers and alternative that clarifies current regulatory language regarding the roll-over of unharvested quota from the NED pursuant to an ICCAT recommendation. Other alternatives considered include no action and further discussions at ICCAT. There could be potential economic impacts associated with these two alternatives, if current regulatory text is misinterpreted as capping the set aside quota at 25 metric tons versus allocating 25 metric tons of BFT each year per the ICCAT recommendation. Retaining the current regulatory text under either alternative would not reflect the intent of the ICCAT recommendation.

Finally, the preferred alternative that requires recreational vessels with a Federal permit to abide by Federal regulations regardless of where they are fishing would standardize compliance with HMS regulations for vessels possessing a federal HMS permit. This would 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 result in simplified compliance with regulations, and therefore would not meet the objectives of the FMP.

There are currently three BiOps issued under the ESA for HMS fisheries: a June 2001 BiOp for the non-pelagic longline and non-shark HMS fisheries; an October 2003 BiOp for the HMS shark fisheries; and a June 2004 BiOp for the HMS pelagic longline fishery. As described in the draft HMS FMP, none of the preferred alternatives are expected to alter fishing practices, techniques, or effort in any way that would increase interactions with protected species or marine mammals. The preferred workshop alternatives implement requirements of both the October 2003 and June 2004 BiOps, and should reduce the post-release mortality of any protected species that are caught. The time/area closure preferred alternatives would provide a framework to consider impacts on protected species before implementing or modifying any time/area closures. Implementing the closed areas, consistent with the GMFMC regulations, is not expected to alter HMS fishing effort or practices because the areas are so small and are of minor importance to HMS fishermen. The preferred alternatives for finetooth and northern albacore tuna are not expected to have any impact at this time would not impose new requirements of changes, at this time, to the fishery. To some extent, the use of circle hooks in billfish tournaments may reduce sea turtle interactions and mortalities in the recreational fishery; however, because the recreational fishery interacts with so few sea turtles, this alternative is not expected to have a significant impact. Similarly, the other preferred alternatives for reducing billfish fishing mortality for the directed recreational fishery are not expected to have any impact on protected species. The preferred alternatives for BFT management provide NMFS with additional flexibility to manage the BFT fishery. To the extent individual category quotas would be limited under

the preferred alternative (there is no limit under the no action alternative), the BFT preferred alternatives could have some minimal positive impact on protected species. The preferred alternative for the fishing year is not expected to alter fishing effort or practices because the fisheries themselves already operate year-round. If the 250–marlin landing limit is approached and the minimize size on marlin is increased, tournaments scheduled for later in the fishing year could be impacted in terms of effort. However, this is unlikely to impact protected species given the small number of interactions with recreational gear. The preferred alternatives for authorized gear could change some fishing practices by allowing fishermen to use spearguns, green-stick, and buoy gear. However, it is unlikely that a speargun fisherman would mistake a sea turtle or other protected species for a tuna. Thus, NMFS does not expect that gear type to increase protected species or marine mammal interactions. In addition, both green-stick and buoy gear have been used in HMS fisheries (incorrectly classified as handline, handgear, or longline); this proposed rule would merely clarify the use of the gear and establish additional restrictions and regulations. In the case of buoy gear, this rule essentially renames an existing gear type (handline) for the commercial swordfish fishery. Furthermore, NMFS is proposing to require handlines to be attached to the vessel. While this may not reduce interactions with protected species (interactions in the handline fishery currently are minimal), it would reduce any mortality and prevent expansion of the fishery. Thus, NMFS does not expect protected species or marine mammal interactions to increase as a result of these changes to fishing gears. NMFS is changing the coordinates of the Florida East Coast closed area to ensure it matches the U.S. EEZ coordinates. Because the change is minor (approximately 1 km), NMFS does not expect this to change the number of protected species interactions. NMFS is also proposing a number of clarifications to the regulations; these clarifications are mainly administrative in nature and should not impact fishing effort or practices.

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: August 5, 2005.

James W. Balsiger,

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

For the reasons set out in the preamble, 50 CFR parts 300, 600, and 635 are proposed to be amended as follows:

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 United States 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 United States. Once a system is available, permit holders will also be able to submit the forms electronically via the Internet.

* * * * *

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. In § 600.725, paragraph (v), table entries 1.A., 1.H., and 1.I. under section IX. Secretary of Commerce are revised to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * * * *	
IX. SECRETARY OF COMMERCE	
1. Atlantic Tunas Swordfish and Sharks Fisheries (FMP):	
A. Swordfish handgear fishery.	A. Rod and reel, harpoon, handline, bandit gear, buoy gear.
* * * * * * *	
H. Tuna recreational fishery.	H. Rod and reel, handline, speargun gear.
I. Tuna handgear fishery.	I. Rod and reel, harpoon, handline, bandit gear, green-stick gear.
* * * * * * *	

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

6. The authority citation for 50 CFR 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. In § 635.2, the definitions of ''East Florida Coast closed area'', ''Fishing year'', ''Handgear'', ''Handline'', and

''Shark'' are revised; paragraph (5) under the definition of ''Management unit'' is revised; the definition of ''ILAP'' is removed; and new definitions for ''Atlantic HMS identification workshop certificate'', ''Buoy gear'', ''Green-stick gear'', ''Madison-Swanson closed area'', ''Protected species workshop certificate'', ''Speargun gear'', and ''Steamboat Lumps closed area'' are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Atlantic HMS identification workshop certificate means the document issued by NMFS indicating that the person issued the certificate successfully completed the HMS identification workshop.

* * * * *

Buoy gear means fishing gear that is released and retrieved by hand, consisting of a single buoy supporting a single mainline to which no more than two hooks or gangions are attached, and to which gear monitoring equipment is affixed. Gear monitoring equipment includes, but is not limited to, radar reflectors, beeper devices, lights, or reflective tape. Buoy gear must be constructed and deployed so that the mainline remains vertical in the water column.

* * * * *

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 January 1 through December 31.

* * * * *

Green-stick gear means a line that is elevated, or suspended, above the water's surface from which no more than 10 hooks or gangions may be hung. The gear must be actively trolled and configured so that the baits are fished on or above the surface of the water. The suspended line, attached gangions, and catch may be retrieved collectively by hand or by mechanical means.

Handgear means handline, harpoon, rod and reel, bandit gear, buoy gear, speargun gear, or green-stick 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.; 29°17′ N. lat., 85°50′ W. long.

Management unit means in this part:

* * * * *

(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 workshop certificate means the document issued by NMFS indicating that the certificate holder has successfully completed the Atlantic HMS protected species release, disentanglement, 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 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 spearguns'' for the purposes of this part means those spearguns that store potential energy provided from the operator's muscles, and that release 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.; 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)(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 issued a swordfish, shark, HMS Angling, or HMS Charter/Headboat permit 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 EEZ, or outside the 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 on HMS fishing, persons aboard the vessel must abide by the state's more restrictive regulations.

* * * * *

(c) * * *

(2) A vessel issued an Atlantic Tunas General category permit 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 an Atlantic Tunas General category permit is fishing in such a tournament, such vessel must comply with HMS Angling category regulations, except as provided in 635.4(c)(3).

* * * * *

(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) * * *

(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 originally issued the LAP, whether through refitting, replacement, or transfer. Such an increase may not exceed 20 percent of the baseline specifications of the vessel originally 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 originally issued the LAP, whether through refitting, replacement, or transfer. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the baseline specifications of the vessel originally 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. 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, a renewal application must be submitted to NMFS, along with a copy of a valid workshop certificate, 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 provided that 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, 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 United States that fishes for, possesses, lands or sells shark or swordfish from the management unit, or 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 for renewal of a limited access permit(s). Limited access permits that have been transferred according to the procedures of paragraph (l) of this section are not eligible for renewal by the transferor.

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) If an owner of an HMS Charter/Headboat, an Atlantic Tunas, a shark, 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, an Atlantic Tunas, a shark, or a swordfish vessel, for which a permit has been issued 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 annual cost-earnings form(s) postmarked no later than January 31 of the following year.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) *Landing reports.* Each dealer issued an Atlantic tunas permit 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 issued an Atlantic tunas permit 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 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 North Atlantic swordfish to NMFS by calling a number designated by NMFS within 24 hours of the landing. No white marlin from the management unit may be taken, retained, or possessed from January 1, 2007, through December 31, 2011, inclusive, as specified in § 635.22(b). For telephone reports, a contact phone number must be provided so that a NMFS designee can call the vessel owner back for follow up questions and to provide a confirmation of the reported landing. The telephone landing report has not been completed unless the vessel owner has received a confirmation number from a NMFS designee.

* * * * *

(d) *Tournament operators.* A tournament operator must register with the NMFS' HMS Management Division all tournaments that are conducted from a port in an Atlantic coastal state, including the U.S. Virgin Islands and Puerto Rico, at least 4 weeks prior to commencement of the tournament by indicating the purpose, dates, and location of the tournament. Tournament registration is not considered complete unless the operator has received a confirmation number from the NMFS' HMS Management Division. NMFS will notify a tournament operator in writing when his or her 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. Add § 635.8 under subpart A to read as follows:

§ 635.8 Workshops.

(a) *Protected species release, disentanglement, and identification workshops.* (1) As of January 1, 2007, both owners and operators of vessels that have been issued or are required to have, Atlantic Tuna Longline Category, shark, or swordfish limited access vessel permits, pursuant to § 635.4(d)(4), (e), and (f), and that fish with longline or gillnet gear, must be certified by NMFS as having completed a workshop on the release, disentanglement, and identification of protected species. For the purposes of this section, it is a rebuttable presumption that vessel owners and/or operators fish 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 will issue a protected species workshop certificate to any permitted entity or person who has completed the workshop.

(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 maintain, and possess on board the vessel, a valid protected species workshop certificate issued to that vessel owner. A copy of a valid protected species 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 an Atlantic Tuna Longline Category, shark, or swordfish limited access permit. An owner who owns multiple vessels will be issued, upon successful completion of one workshop, multiple certificates to cover each vessel that he or she owns. An owner who is also an operator will be issued multiple certificates, one for the vessel and one for the operator.

(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 workshop certificate issued to that operator, in addition to a certificate issued to the vessel owner.

(5) 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 issued by NMFS no later than December 31, 2006.

(b) *Atlantic HMS identification workshops.* (1) As of January 1, 2007, all Federal Atlantic shark dealers permitted or required to be permitted pursuant to § 635.4(g)(2), or a proxy as specified in paragraph (b)(4), must be certified by NMFS as having completed a workshop on the identification of HMS.

(2) NMFS will issue an Atlantic HMS identification workshop certificate to any permitted entity or a proxy who has completed a workshop.

(3) Dealers who own multiple businesses and who attend and successfully complete the workshop themselves will be issued multiple certificates to cover each place of business that he or she owns.

(4) Dealers may send a proxy to the 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, or first receipt of fish as they are offloaded from a vessel; and is involved in filling out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy leaves the employment of 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.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must maintain and make available for inspection, at each place of business, a valid Atlantic HMS identification workshop certificate. 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.

(c) *Terms and conditions.* (1) Certificates, as described in paragraphs (a) and (b) of this section, are valid for three calendar years from the date of issuance. All certificates must be renewed every three years.

(2) If a vessel fishes with longline or gillnet gear as described in paragraph (a), the vessel's owner cannot renew his or her Atlantic tunas Longline Category, shark, or swordfish limited access permit issued pursuant to § 635.4(d)(4), (e), or (f) without a valid protected species workshop certificate.

(3) An operator of a vessel that fishes with longline or gillnet gear as described in paragraph (a) and that has been or should be issued a limited access permit pursuant to § 635.4(d)(4), (e), or (f), cannot fish without valid protected species workshop certificates issued to both the owner of that vessel and operator on board that vessel.

(4) An Atlantic shark dealer cannot receive, purchase, trade, or barter for Atlantic shark without a valid Atlantic HMS identification workshop certificate on the premises of each business location. An Atlantic shark dealer cannot renew a Federal dealer permit issued pursuant to § 635.4(g)(2) without a valid Atlantic HMS identification workshop certificate.

(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 cannot transfer that certificate to another person.

(6) Vessel owners issued a valid protected species workshop certificate can request, in the application for permit transfer per § 635.4(l)(2), additional protected species workshop certificates for additional vessels that they own. Shark dealers can request from NMFS additional Atlantic HMS identification workshop certificates for additional places of business that they own provided that they, and not a proxy, were issued the certificate. Any additional certificates will expire three years after the workshop was attended and successfully completed, not three years after the request for an additional certificate.

12. In § 635.20, paragraph (d)(2) is revised; and paragraph (d)(4) is added to read as follows:

§ 635.20 Size limits.

* * * * *

(d) * * *

(2) No person shall take, retain or possess a white marlin taken from its management unit that is less than 66 inches (168 cm), LJFL. No white marlin from the management unit may be taken, retained or possessed from January 1, 2007, through December 31, 2011, inclusive, as specified in § 635.22(b).

* * * * *

(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 and 70 and 79 inches, respectively, to achieve, but not exceed, the annual Atlantic marlin landing limit specified in § 635.27(d). No white marlin from the management unit may be taken, retained, or possessed from January 1, 2007, through December 31, 2011, inclusive, as specified in § 635.22(b). Minimum size limit increases will be based upon a review of landings, the period of time remaining until conclusion of 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 5 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.

* * * * *

13. 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.

(iv) For the purposes of this paragraph, 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 other than with the primary gears, which are the gears specifically authorized in this part. Consistent with paragraphs (a)(1) and (a)(2) of this section, secondary gears may be used 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 on free-swimming HMS. A vessel using or having onboard in the Atlantic Ocean any unauthorized gear may not have 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 a bottom longline onboard, the vessel may not, at any time:

(i) 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 weight of demersal species possessed or landed, that are listed in Table 3 of Appendix A to this part; and

(ii) Possess or deploy more than 70 fishing floats.

(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 a pelagic longline onboard, the vessel may not, at any time:

(i) 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 weight of pelagic species possessed or landed, that are listed in Table 2 of Appendix A to this part; and

(ii) Possess or deploy less than 71 fishing floats.

(e) * * *

(1) *Atlantic tunas.* A person that fishes for, retains, or possesses an Atlantic bluefin tuna may not have on board a vessel, use on board the vessel, or deploy green-stick gear or 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 fishing 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.* Rod and reel (including downriggers), handline, and speargun gear.

(ii) *Charter/Headboat.* Rod and reel (including downriggers), bandit gear, handline, speargun gear, and green-stick gear (on non for-hire trips).

(iii) *General.* Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick gear.

* * * * *

(2) * * *

(i) Only persons who have been issued an HMS Angling or a Charter/Headboat permit, or who have been issued an 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. No white marlin from the management unit may be taken, retained, or possessed from January 1, 2007, through December 31, 2011, inclusive.

(ii) Only persons who have been issued an HMS Angling or a Charter/Headboat permit, or who have been issued an 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) 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, 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 directed handgear LAP for Atlantic swordfish may not fish for swordfish with any gear other than handgear. Vessels that have been issued or that are required to have been issued a directed or handgear swordfish limited access permit under this part and that are utilizing buoy gear may not possess or deploy more than 35 individual buoys per vessel. All deployed buoy gear must have 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 buoys. 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.

* * * * *

(f) *Speargun gear.* Persons authorized to fish for Atlantic tunas using speargun gear, as specified in paragraph (e)(1) of this section, must be physically in the water when the speargun is fired, and may freedive, use SCUBA or other underwater breathing devices. Only free-swimming fish, not those restricted by fishing lines or other means may be taken by speargun gear. Powerheads, as defined at § 600.10 of this part, are not allowed to be used to harvest or fish for tunas with speargun gear.

14. 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. No white marlin from the management unit may be taken, retained, or possessed from January 1, 2007, through December 31, 2011, inclusive.

(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), and, 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 a person aboard a vessel which 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.

* * * * *

15. 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 § 635.28(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 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 § 635.28 (a)(8). Such adjustments to the retention limits may be applied 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) For pelagic longline vessels fishing in the Northeast Distant gear restricted area, under the exemption specified at § 635.21(c)(2)(v), all BFT taken incidental to fishing for other species while in that area may be retained 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.

* * * * *

16. 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) Persons who own or operate 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) Persons who own or operate 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) Persons who own or operate 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. * * *

17. In § 635.27, paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(i), (a)(1)(iii), (a)(2), (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 inclusive of 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) 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.* Consistent with the Administrative Procedure Act and 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.* Consistent with the Administrative Procedure Act and in accordance with the framework procedures of the HMS FMP, prior to each fishing year or as early as feasible, NMFS will set 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 and, 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 as specified under paragraph (a)(7)(ii) of this section.

(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 for which Longline category Atlantic Tunas permits have been issued 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 for which Purse Seine category Atlantic Tunas permits have been issued 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 altered 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 for which Harpoon category Atlantic Tunas permits have been issued 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 for which Trap category Atlantic Tunas permits have been issued 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 (36.6 mt) of the total school BFT quota for the Angling category as described under paragraph (a)(2) of this section, which 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 such 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 the 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 above unharvested quota amounts being carried forward 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 in Section 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 swordfish stock caught prior to the directed fishery closure by a vessel for which a directed or handgear swordfish limited access permit has been issued is counted against the directed fishery quota. The annual fishery quota, not adjusted for over-or underharvests, is 2,937.6 mt dw. 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 for which a directed fishery permit for swordfish has been issued; retention of swordfish caught incidental to other fishing activities or with other fishing gear is prohibited 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. Consistent with the APA, 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 shall 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 shall 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 landing 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, this annual landing limit is 250 Atlantic blue and white marlin, combined.

(2) Consistent with ICCAT recommendations and domestic

management objectives, and based on landings statistics, catch rate information, amount of time left in the fishing year, and any other relevant information, if NMFS determines that aggregate landings of Atlantic blue and white marlin exceeded the annual landing limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS will subtract any overharvest from the landing limit for the following fishing year. If NMFS determines that aggregate landings of Atlantic blue and white marlin were below the annual landing limit for a given fishing year, as established in paragraph (d)(1) of this section, NMFS may add any underharvest to the landing limit for the following fishing year.

(3) Prior to the start of each fishing year or as early as possible, NMFS will file with the Office of the Federal Register for publication the annual recreational marlin landing limit specified in paragraph (d)(1) of this section, adjusted for any overharvest or underharvest, as specified in paragraph (d)(2) of this section.

(4) When the annual marlin landing limit specified in paragraph (d)(3) of this section is reached or projected to be reached, 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 5 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.

18. 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 action 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 action, 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 action.

* * * * *

(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 it at a later date if NMFS determines that reasonable fishing opportunities are available, i.e., BFT have migrated into the area or weather is conducive for fishing, etc. 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).

* * * * *

19. In § 635.30, paragraphs (b) and (c)(2) are revised to read as follows:

§ 635.30 Possession at sea and landing.

* * * * *

(b) *Billfish.* Any person that possesses a blue marlin or a white marlin taken from its management unit or a sailfish taken shoreward of the outer boundary of the EEZ or lands a blue marlin or a white marlin in an Atlantic coastal port must maintain such billfish with its head, fins, and bill intact through offloading. Persons may eviscerate such billfish, but it must otherwise be maintained whole. No white marlin from the management unit may be taken, retained, or possessed from January 1, 2007, through December 31, 2011, inclusive, as specified in § 635.22(b).

(c) * * *

(2) A person who owns or operates a vessel that has been issued a 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. While on board and when offloaded, wet shark fins may not exceed 5 percent of the dressed weight of the carcasses, in accordance with the regulations at part 600, subpart N, of this chapter.

* * * * *

20. In § 635.31, paragraph (a)(1) is revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

(a) * * *

(1) Persons that own or operate 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 General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic Tunas issued under this part. However, no person shall sell a BFT smaller than the large medium size class. No large medium or giant BFT taken with speargun fishing gear or green-stick gear, shall be sold. 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, shall be sold (see § 635.23(c)). Persons shall sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

* * * * *

21. 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 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield levels 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, the following: any ESA-related issues, concerns, or requirements, including applicable Biological Opinions; 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; applicable research; 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 United States' catch on that species before implementing time/area closures.

22. In § 635.71, paragraphs (a)(7), (a)(8), (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)(11), and (e)(15) are revised; and paragraphs (a)(48) through (a)(53), (b)(30), (c)(7) through (c)(9), and (d)(14) 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).

* * * * *

(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) Fail to be certified for completion of a NMFS protected species workshop, as required in § 635.8(a).

(51) Fail to have on board a vessel the valid protected species workshop certificates issued to the vessel owner and vessel operator as required in § 635.8(a).

(52) Transfer or falsify a NMFS protected species workshop certificate or a NMFS Atlantic HMS identification workshop certificate as specified at § 635.8.

(53) Fish for, catch, possess, retain, or land an Atlantic HMS using, or captured on, buoy gear, as defined at § 635.2, unless the vessel owner has been issued a swordfish directed limited 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) Harvest or fish for tunas using spearguns with powerheads, as specified in § 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 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 is closed, as specified in § 635.27(d).

(9) Take, retain, or possess an Atlantic white marlin from January 1, 2007, through December 31, 2011, inclusive, as specified in § 635.22(b).

(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 for, or barter for Atlantic shark and fail to be certified for completion of a NMFS Atlantic HMS identification workshop in violation of § 635.8(b).

* * * * *

(14) Receive, purchase, trade for, or barter for Atlantic shark without making available for inspection, at each of the dealer's places of business, a valid Atlantic HMS identification workshop certificate issued by NMFS in violation of § 635.8(b).

(e) * * *

(11) As the owner of a vessel permitted, or required to be permitted, in the swordfish directed or a swordfish handgear limited access permit category, possess or deploy more than 35 individual buoy gears per vessel, or deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(e)(4)(iii).

* * * * *

(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).

23. 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*
Bonnethead shark, *Sphyrna tiburo*
Bull shark, *Carcharhinus leucas*
Cubera snapper, *Lutjanus cyanopterus*
Dog snapper, *Lutjanus jocu*
Finetooth shark, *Carcharhinus isodon*
Gag grouper, *Mycteroperca microlepis*
Great hammerhead shark, *Sphyrna mokarran*
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*
Sandbar shark, *Carcharhinus plumbeus*
Scalloped hammerhead shark, *Sphyrna lewini*
Schoolmaster snapper, *Lutjanus apodus*
Silk snapper, *Lutjanus vivanus*
Silky shark, *Carcharhinus falciformis*
Smooth hammerhead shark, *Sphyrna zygaena*
Snowy grouper, *Epinephelus niveatus*
Speckled hind, *Epinephelus drummondhayi*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*
Vermilion snapper, *Rhomboplites aurorubens*
Warsaw grouper, *Epinephelus nigritus*
Yellowedge grouper, *Epinephelus flavolimbatus*
Yellowfin grouper, *Mycteroperca venenosa*
Yellowtail snapper, *Ocyurus chrysurus*

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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.

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- Florida; comments due by 8-23-05; published 6-24-05 [FR 05-12616]

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- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

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- National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

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- Small business entities; economic impact; comments due by 8-22-05; published 7-21-05 [FR 05-14441]

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- Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

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  - Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3423/P.L. 109–43

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H.R. 38/P.L. 109–44

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H.R. 481/P.L. 109–45

Sand Creek Massacre National Historic Site Trust Act of 2005 (Aug. 2, 2005; 119 Stat. 445)

H.R. 541/P.L. 109–46

To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (Aug. 2, 2005; 119 Stat. 448)

H.R. 794/P.L. 109–47

Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109–48

To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109–49

Expressing the sense of Congress with respect to the women suffragists who fought for and won the right of women to vote in the United States. (Aug. 2, 2005; 119 Stat. 457)

S. 571/P.L. 109–50

To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the "Congresswoman Shirley A. Chisholm Post Office Building". (Aug. 2, 2005; 119 Stat. 459)

S. 775/P.L. 109–51

To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the "Boone Pickens Post Office". (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52

To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the "Brian P. Parrello Post Office Building". (Aug. 2, 2005; 119 Stat. 461)

H.R. 3045/P.L. 109–53

Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Aug. 2, 2005; 119 Stat. 462)

H.R. 2361/P.L. 109–54

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 499)

H.R. 2985/P.L. 109–55

Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109–56

To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109–57

Controlled Substances Export Reform Act of 2005 (Aug. 2, 2005; 119 Stat. 592)

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