exploration of matters raised in the comments.

§ 4.624 When may further proceedings be held?

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, the adjudicative officer may order further proceedings, which will be held only when necessary for full and fair resolution of the issues and will be conducted as promptly as possible.

(b) The adjudicative officer may order further proceedings on his or her own initiative or in response to a request by you or by the Department or other agency. A request for further proceedings under this section must:

(1) Identify the information sought or the disputed issues; and

(2) Explain why the additional proceedings are necessary to resolve the issues.

(c) As to issues other than substantial justification (such as your eligibility or substantiation of fees and expenses), further proceedings under this section may include an informal conference, oral argument, additional written submissions, pertinent discovery, or an evidentiary hearing.

(d) The adjudicative officer will determine whether the position of the Department or other agency was substantially justified based on the administrative record of the adversary adjudication as a whole.

§ 4.625 How will my application be decided?

The adjudicative officer must issue a decision on the application promptly after completion of proceedings on the application. The decision must include written findings and conclusions on all of the following that are relevant to the decision:

(a) Your eligibility and status as a prevailing party;

(b) The amount awarded, and an explanation of the reasons for any difference between the amount requested and the amount awarded;

(c) Whether the position of the Department or other agency was substantially justified;

(d) Whether you unduly protracted the proceedings; and

(e) Whether special circumstances make an award unjust.

§ 4.626 How will an appeal from a decision be handled?

(a) If the adjudicative officer is an administrative law judge, you or the Department or other agency may appeal his or her decision on the application to the appeals board that would have jurisdiction over an appeal involving the merits of the proceeding. The appeal will be subject to the same rules and procedures that would apply to an appeal involving the merits of the proceeding. The appeals board will issue the final Departmental or other agency decision on the application.

(b) If the adjudicative officer is a panel of appeals board judges, their decision on the application is final for the Department or other agency.

§ 4.627 May I seek judicial review of a final decision?

You may seek judicial review of a final Departmental or other agency decision on an award as provided in 5 U.S.C. 504(c)(2).

§ 4.628 How will I obtain payment of an award?

(a) To obtain payment of an award against the Department or other agency, you must submit:

(1) A copy of the final decision granting the award; and

(2) A certification that no party is seeking review of the underlying decision in the United States courts, or that the process for seeking review of the award has been completed.

(b) If the award is against the Department:

(1) You must submit the material required by paragraph (a) of this section to the following address: Director, Office of Financial Management, Policy, Management and Budget, U.S. Department of the Interior, Washington, DC 20240.

(2) Payment will be made by electronic funds transfer whenever possible. A representative of the Department will contact you for the information the Department needs to process the electronic funds transfer.

(c) If the award is against another agency, you must submit the material required by paragraph (a) of this section to the chief financial officer or other disbursing official of that agency. Agency counsel must promptly inform you of the title and address of the appropriate official.

(d) The Department or other agency will pay the amount awarded to you within 60 days of receiving the material required by this section.

[FR Doc. 05–19896 Filed 10–4–05; 8:45 am]

BILLING CODE 4310–79–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 29

[Docket OST–2005–22602]

RIN 2105–AD46

Debarment and Suspension (Nonprocurement) Requirements

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This proposal would amend Department of Transportation regulations implementing the governmentwide nonprocurement suspension and debarment requirements. Specifically, the DOT proposes to adopt the optional lower tier coverage prohibiting excluded parties from participating in subcontracts at tiers lower than the first tier below a covered nonprocurement transaction.

DATES: Comments must be received on or before November 4, 2005.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dms.dot.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ladd Hakes, Office of the Senior Procurement Executive, Office of Administration (M–61), (202) 366–4268, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard

Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

On November 26, 2003, the DOT, along with twenty-nine other agencies, published its final rule implementing changes to the governmentwide debarment and suspension common rule (68 FR 66534). These regulations were intended to resolve unnecessary technical differences between suspensions and debarments in the procurement and nonprocurement systems, revise the existing governmentwide suspension and debarment regulations in a plain language style and format, and make other improvements consistent with the purpose of the suspension and debarment system. One of the changes made to the suspension and debarment rules included limiting the exclusion from a suspension or debarment to only the first procurement level. Under the previous governmentwide regulations, all executive agencies applied suspensions and debarments to all procurement levels. However, in the revised governmentwide suspension and debarment regulations, each agency was given the option of applying an exclusion from a suspension or debarment to levels below the first procurement level.

This NPRM proposes to adopt the option to apply an exclusion under the suspension and debarment regulations to levels below the first procurement level. Many of the DOT programs involve billions of dollars in grants that are obligated to construction projects by States, localities, and other recipients. For instance, in fiscal year 2003 alone, the DOT apportioned $24,129,858,248 to the States for highway construction under the Federal-aid Highway Program. Since Federal Highway Administration regulations governing the Federal-aid Highway Program require prime contractors to perform only 30 percent of the contract work themselves (less designated specialty items), a suspended or debarred contractor may continue to receive significant Federal-aid Highway work by continuing to obtain subcontracts. Moreover, suspended or debarred contractors may continue to participate in subcontracts for other DOT programs as well, such as the Federal Transit Program and the Federal-aid Airport Program. The ability of excluded contractors to continue receiving significant subcontracts makes these DOT programs highly vulnerable to fraud, waste, and abuse. As such, DOT is proposing to include the optional lower tier coverage for all DOT nonprocurement transactions.

Section-by-Section Analysis

Section 29.220 Are any Procurement Contracts Included as Covered Transactions?

This NPRM would add a new paragraph (c) to this section to cover contracts that are awarded by any contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction that is expected to equal or exceed $25,000.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the DOT will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The DOT has determined that this document does not propose a significant rule within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal, since it would bring the DOT's regulations concerning the effect of a suspension and debarment back in line with the regulations that were in effect prior to November 26, 2003. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the Department has evaluated the effects of this proposed action on small entities and certifies that the proposed action would not have a significant economic impact on a substantial number of small entities. This proposal would bring the DOT's regulations concerning the effect of a suspension and debarment back in line with the regulations that were in effect prior to November 26, 2003 by excluding persons who have been suspended or debarred from participating in transactions beneath the first procurement level under a nonprocurement transaction. The only parties that might be economically impacted are subcontractors which are suspended or debarred. Based on its experience in implementing suspension and debarment regulations, the Department concludes that a significant number of entities, regardless of size, are unlikely to be suspended or debarred. For these reasons, the DOT certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). Indeed, it does not impose any mandates. This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the DOT has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The DOT has also determined that this proposed action would not preempt any State law or State regulation or affect the

States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number [Insert number], [Insert Program Name]. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities [apply/do not apply] to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 29

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Issued this 22nd day of September, 2005, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

In consideration of the foregoing, the DOT proposes to amend title 49, Code of Federal Regulations, part 29, as set forth below:

PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

1. The authority citation for part 29 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235).

2. In § 29.220, add paragraph (c) to read as follows:

§ 29.220 Are any procurement transactions included as covered transactions?

* * * * *

(c) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the DOT under a nonprocurement transaction that is expected to equal or exceed $25,000. [See optional lower tier coverage shown in the diagram in the appendix to this part.]

[FR Doc. 05–19965 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 051603C]

RIN 0648–AQ65

Atlantic Highly Migratory Species; 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: Extension of comment period; rescheduling of the Joint Advisory Panel meeting.

SUMMARY: Due to the need to reschedule three public hearings regarding the draft Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), and the extended recovery period needed for the Gulf region constituents from Hurricanes Katrina and Rita, NMFS is extending the comment period to provide adequate opportunity for public comment on the draft Consolidated HMS FMP and its proposed rule. NMFS is extending the comment period until March 1, 2006. The original comment period was scheduled to conclude on October 18, 2005. The three public hearings were cancelled in **Federal Register** documents on September 7 and 23, 2005. The draft Consolidated HMS FMP and its proposed rule describe a range of management measures that could impact fishermen and dealers for all HMS fisheries. NMFS is also rescheduling the October 11–13, 2005, HMS and Billfish Advisory Panels (AP) meeting to February 21–23, 2006. The intent of this meeting is to consider alternatives for the conservation and management of HMS as presented in the draft Consolidated HMS FMP and its proposed rule.

DATES: Written comments on the August 19, 2005 (70 FR 48804), proposed rule and the draft HMS FMP must be received no later than 5 p.m. on March 1, 2006.

The rescheduled AP meeting will be held from 1 p.m. to 5 p.m. on Tuesday, February 21, 2006, from 8 a.m. to 5 p.m. on Wednesday, February 22, 2006, and from 8 a.m. to 5 p.m. on Thursday, February 23, 2006.

ADDRESSES: The AP meeting will be held at the Holiday Inn, 8777 Georgia Avenue (Rt. 97), Silver Spring, MD 20910.

Written comments on the proposed rule and draft HMS FMP may be submitted to Karyl Brewster-Geisz, Highly Migratory Species Management Division by any of the following:

- 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 on the Highly Migratory Species Management Division's website at *www.nmfs.noaa.gov/sfa/hms* or by contacting Karyl Brewster-Geisz at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: For more information concerning the draft Consolidated HMS FMP and its proposed rule 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. For information regarding the rescheduled AP meeting contact Heather Stirratt at the specified number above.

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