

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a 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). This rule will be effective June 24, 2008.

Dated: April 17, 2008.

Stephen L. Johnson,
Administrator.

■ For the reasons set forth above, EPA is amending the definition of substantially similar as follows:

Definition—Substantially Similar

EPA will treat a fuel or fuel additive for general use in light-duty vehicles manufactured after model year 1974 as substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year vehicle or engine, under section 206 of the Act, i.e., “substantially similar,” if the following criteria are met.

(1) The fuel must contain carbon, hydrogen, and oxygen, nitrogen, and/or sulfur, exclusively,² in the form of some combination of the following:

- (a) Hydrocarbons;
- (b) Aliphatic ethers;
- (c) Aliphatic alcohols other than methanol;

(d)(i) Up to 0.3 percent methanol by volume;

(ii) Up to 2.75 percent methanol by volume with an equal volume of butanol, or higher molecular weight alcohol;

(e) A fuel additive³ at a concentration of no more than 0.25 percent by weight

²Impurities which produce gaseous combustion products (i.e., products which exist as a gas at Standard Temperature and Pressure) may be present in the fuel at trace levels. An impurity is that substance which is present through contamination, or remains naturally, after processing of the fuel is completed.

³For the purposes of this interpretive rule, the term “fuel additive” refers only to that part of the additive package which is not hydrocarbon.

which contributes no more than 15 ppm sulfur by weight to the fuel.

(2) The fuel must contain no more than 2.0 percent oxygen by weight, except fuels containing aliphatic ethers and/or alcohols (excluding methanol) must contain no more than 2.7 percent oxygen by weight.

(3) The fuel must possess, at the time of manufacture, all of the physical and chemical characteristics of an unleaded gasoline as specified in ASTM Standard D 4814–88 for at least one of the Seasonal and Geographical Volatility Classes specified in the standard, with the exception of fuel introduced into commerce in the state of Alaska. For fuel introduced into commerce in the state of Alaska, all of the requirements of this section (3) apply, with the exception of the test temperature for a maximum Vapor/Liquid Ratio (V/L) of 20, which shall be a minimum of 35 °C (95 °F) for the period from September 16 through May 31.

(4) The fuel additive must contain only carbon, hydrogen, and any one or all of the following elements: Oxygen, nitrogen, and/or sulfur.⁴

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Part 148

[CMS–2260–F]

RIN 0938–A046

Grants to States for Operation of Qualified High Risk Pools

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final Rule.

SUMMARY: This rule finalizes the interim final rule with comment period that was published on July 27, 2007, regarding extended funding for seed and operational grants for State High Risk Pools under the Public Health Service Act.

DATES: *Effective Date:* These regulations are effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Jessica Kahn, (410) 786–9361, or John Young, (410) 786–0505.

SUPPLEMENTARY INFORMATION:

⁴Impurities which produce gaseous combustion products may be present in the fuel additive at trace levels.

I. Background

The Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107–210) added section 2745 of the Public Health Service Act (PHS Act) to provide for two types of grants to States for the promotion of “qualified high risk pools.” These pools provide health coverage to high-risk individuals who may find private health insurance unavailable or unaffordable. Under this provision, a pool could meet the definition of a “qualified” high risk pool for purposes of section 2745 only if it met the definition of a qualified high risk pool in section 2744(c)(2) of the PHS Act. Section 2744 deals with how States can satisfy the requirement of section 2741 of the PHS Act to guarantee access to health coverage for individuals who meet the definition of an “eligible individual” under section 2741, as added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). These individuals are commonly referred to as “HIPAA-eligible” individuals.

Under section 2744(c)(2) of the PHS Act, a qualified high risk pool must provide health coverage without a pre-existing condition exclusion to “all” HIPAA-eligible individuals. This meant that State high risk pools that did not allow all HIPAA-eligible individuals into the pool without a pre-existing condition exclusion could not meet the definition of a “qualified” risk pool.

The two types of grants authorized by the legislation were “seed grants” for States that had not yet created a high risk pool, and “operational” grants to offset losses incurred by States that operate a qualified high risk pool. Under the prior law, in order for a risk pool to qualify for an operational grant, it could not charge premiums that exceeded 150 percent of the premium for applicable standard risk rates. Moreover, the amount of the grants was limited to 50 percent of the losses incurred by a State.

Section 6202 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) and the State High Risk Pool Extension Act of 2006 (Pub. L. 109–172) (Extension Act) extended funding for seed and operational grants for State High Risk Pools and amended section 2745 of the PHS Act. The Extension Act made the following changes:

1. Expanded the definition of a “qualified high risk pool.” As noted above, section 2745(d) of the PHS Act previously defined the term to have the same meaning as in section 2744(c)(2) of the PHS Act, which required that the risk pool provide coverage to “all” HIPAA-eligible individuals (as defined in § 148.103), without any pre-existing

condition exclusion. The revised definition specifies that, for purposes of grants under section 2745, a risk pool can be qualified even if the State uses other mechanisms beyond the risk pool to ensure that health coverage is provided to all HIPAA-eligibles.

2. Expanded the definition of “State.” Section 2745 of the PHS Act previously defined this term to include only the 50 States and the District of Columbia, but has now been amended to include U.S. Territories.

3. Increased the amount of premiums that a risk pool can charge and still qualify for an operational grant. Section 2745 of the PHS Act previously required that the premiums charged under the pool not exceed 150 percent of the premium for applicable standard risk rates. As amended, it permits grants to States with premiums of up to 200 percent of the standard risk rates, as long as States with premiums greater than 150 percent of the standard rate use at least half of the grant funds to reduce high risk pool premiums for enrollees.

4. Removed the limitation that a State’s grant not exceed 50 percent of its operating losses.

5. Changed the funding allotment formula. Previously, the grant funds were to be allotted to States under a relatively simple formula based on the number of uninsured individuals in the State. Under the new legislation, the allotment formula is more complex. Of the total appropriation for a given year—if money is appropriated—two-thirds would be available for grants to cover operational losses. Of these funds, 40 percent is to be equally divided among any of the 50 States and the District of Columbia that apply. Another 30 percent of that amount is allotted among all States that apply for grants based on the ratio of uninsured individuals in the State to uninsured individuals in all States that apply. The final 30 percent is to be allotted based on the ratio of the number of individuals enrolled in a State’s risk pool to the number enrolled through the risk pools of all the qualifying States that apply. (Territories are eligible for the proportional allotments, but only up to a total of \$1 million for all Territories combined.)

6. Provided authority for “bonus grants” to States (not including Territories) that qualify for operational grants. One-third of a total yearly appropriation will be used to provide grants to enable States to provide specified supplemental consumer benefits to enrollees or potential enrollees of the qualified high risk pool.

(A bonus grant is not to exceed 10 percent of the total for any one State.)

This final rule updates our regulations at 45 CFR Part 148, Subpart E, Grants to States for Operation of Qualified High Risk Pools, to implement the changes made by the Deficit Reduction Act of 2005 and the State High Risk Pool Extension Act of 2006. Specific instructions about the grant solicitation and award process will be addressed in official grant announcements or other appropriate documents.

II. Provisions of the Interim Final Rule

On July 27, 2007, we published in the **Federal Register** an interim final rule with comment period (72 FR 41232). In that rule we revised the regulation text in 45 CFR part 148 to conform with the State High Risk Pool Extension Act of 2006 and the DRA. These revisions are discussed in detail below.

A. Definitions (§ 148.308)

We amended § 148.308 (Definitions) to

- Add a definition of “bonus grants.”
- Revise the definition of “qualified high risk pool;” and
- Revise the definition of “State.”

1. Bonus Grant

We added the following definition for Bonus Grants—Funds that the Secretary provides from the appropriated grant funds to be used to provide supplemental consumer benefits to enrollees or potential enrollees in qualified high risk pools.

2. Qualified High Risk Pool

We amended the definition at § 148.308 to reflect the exception added by the Extension Act in section 2745(g)(1)(A) of the PHS Act. Specifically, a State may elect to meet the definition of a qualified high risk pool under § 148.128(a)(2)(ii)(A) by providing for enrollment of eligible individuals through an acceptable alternative mechanism (as defined for purposes of section 2744 of the PHS) that includes a high risk pool as a component.

3. State

In accordance with the Extension Act, we amended the definition to include any of the 50 States and the District of Columbia, and the U.S. Territories of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

B. Grants for Operational Losses (§ 148.310)

1. Eligibility Requirements for an Operational Grant

This section specifies the eligibility requirements for operational grants. A State must meet all of the following requirements to be eligible for a grant:

a. *Maximum premium.* We amended § 148.310 to reflect that the statute has increased the maximum premium that a risk pool can charge and still qualify for a grant. The maximum has been changed from 150 percent to 200 percent of the premium for applicable standard risk rates for the State.

b. *Continued funding.* The statute previously required that the pool have in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of FY 2004, which was the last year that grants were authorized under the prior appropriation. The statute, as revised by the Extension Act, now requires that a risk pool have such a mechanism to ensure funding after the end of the last fiscal year for which a grant is provided. We interpret this to mean that the pool has capacity or mechanisms in place that can reasonably be expected to ensure that it may operate in the future without the benefit of Federal funding.

In the case of a qualified high risk pool of a State that charges premiums that exceed 150 percent of the premium for applicable standard risks, the State must use at least 50 percent of the amount of the grant provided to the State to reduce premiums for enrollees. The application should demonstrate/attest that the funds will be used this way.

2. Amount of Grant Payment (§ 148.312)

Two-thirds of any amounts appropriated are made available for operational grants. An eligible State may receive a grant to fund up to 100 percent of the losses incurred in the operation of its qualified high risk pool during the fiscal year for which it is applying. The grant may be less than 100 percent after the allotment limits are applied, but in no case will it be more than 100 percent.

Funds will be allocated in accordance with § 148.312 to each State that meets the eligibility requirements of § 148.310 and files an application in accordance with § 148.316. Specifically:

- Forty percent of funds made available under that section will be equally divided among any of the 50 States and the District of Columbia that meet the eligibility criteria for an operational grant;
- Thirty percent of funds made available will be divided among States

(including territories) based on the number of uninsured residents in the State during the specified year as compared to the total number of uninsured residents in all States that apply for grants;

- Thirty percent will be divided among States (including territories) based on the number of people in State high risk pools during the specified year as compared to all States that apply.

In accordance with the statute, in no case will the aggregate amount allotted and made available to the U.S. Territories for a fiscal year exceed \$1 million.

We will calculate the number of uninsured individuals for each eligible State by taking a 3-year average of the number of uninsured individuals in that State in the Current Population Survey (CPS) of the Census Bureau. The 3-year average will be calculated using numbers available as of March 1 of each year for the preceding 3-year period.

C. Bonus Grants

One-third of the total appropriation will be available for the bonus grants. These grants will be available to any one of the 50 States and the District of Columbia that receives an operational grant under § 148.310. The grants must be used to provide one or more of the following benefits:

- (1) Low income premium subsidies;
- (2) Reduction in premium trends, actual premium or other cost-sharing requirements;
- (3) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment rules;
- (4) Less stringent rules or additional waiver authority with respect to coverage of pre-existing conditions;
- (5) Increased benefits; and
- (6) The establishment of disease management programs. In no case will a State receive bonus grants that exceed 10 percent of the total funds allotted for bonus grants in that fiscal year.

D. Periods During Which Eligible States May Apply for a Grant (§ 148.314)

Funds were appropriated for Federal FY 2006 and are authorized for FY 2008 through FY 2010. Funding for FY 2008, FY 2009, and FY 2010 under the Extension Act requires subsequent enactment of appropriations authority. States will be unable to apply for grants unless and until such funding becomes available. A State that meets the eligibility requirements in § 148.310 may apply for a grant to fund losses that were incurred during the State's or pool's fiscal year ending prior to or

during any federal fiscal year, 2007 through 2010 for which authorized funds are appropriated, in connection with the operation of its qualified high risk pool. Grant funding is administered on a retrospective basis (for example, pools with losses incurred in 2005 may apply for Federal FY 2006 grant funds). If a State becomes eligible for a grant in the middle of its fiscal year, a State may apply for losses incurred in a partial fiscal year if a partial year audit is done. Only losses that are incurred after it is established that a pool is eligible (that is, that it is a qualified high risk pool as defined by § 148.128(a)(2)(ii)) will qualify for a grant. An eligible State must apply for a grant no later than June 30 following the end of the State fiscal year during which it incurred losses. Each State may only be awarded one grant per fiscal year. A grant for a partial fiscal year counts as a full grant.

States that meet all of the eligibility requirements in § 148.310 and submit timely requests in accordance with paragraph (c) of § 148.314 will receive distribution of grant funds using the following methodology:

- Grant applications for losses will be on a retrospective basis. For example, grant applications for 2006 funds are based on the State's FY 2005 incurred losses.
- Grant allocations for each fiscal year will be determined by taking all grant applications received by June 30 of the Federal fiscal year and allocating grant funds in accordance with § 148.312. In no case will a State receive funds greater than 100 percent of its losses.

If any excess funds remain after the initial calculation, these excess funds will be proportionately redistributed to the States whose allocations have not exceeded 100 percent of their losses. This process will occur at the time of the initial calculation and there will be one annual allocation and distribution by September 30 of each year.

Grant Application Instructions (§ 148.316)

We amended § 148.316 to reflect the addition of application requirements for bonus grants. We changed the heading of § 148.316(a), "Application package," to "Application for operational losses." We inserted a bonus grants section by redesignating § 148.316(a)(3) as § 148.316(a)(4) and adding new paragraph (a)(3), the bonus grants requirements. The individual State applying for a bonus grant must provide:

- (i) A narrative description with detailed information about each one of the following supplemental consumer

benefits to be provided to enrollees and/or potential enrollees in the high risk pool:

- (A) Low income premium subsidies;
- (B) Reduction in premium trends, actual premium or other cost-sharing requirements;
- (C) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment;
- (D) Less stringent rules, or additional waiver authority with respect to coverage of pre-existing conditions;
- (E) Increased benefits; and
- (F) The establishment of disease management programs.

- (ii) A description of the population or subset population that will be eligible for the supplemental consumer benefits.

- (iii) A projected budget for the use of bonus grant funds using the SF 424 and SF 424 A.

We revised the "Standard forms application kit" in § 148.316(b). We eliminated the text "Additional Assurances" in "Standard forms application kit," paragraph (b)(1)(i).

We also changed the Web site URL address for the "Standard forms kit" download at paragraph (b)(1)(ii) to <http://www.grants.gov>.

There are no other changes to the content of the "Standard forms application kit."

In § 148.316(c), "Submission of application package," we deleted paragraphs (c)(1) and (c)(2) and replaced with text that will read: All applications should be submitted electronically via <http://www.grants.gov>.

In § 148.316(d), "Application deadlines," we changed the applications deadlines text to read: The deadline for States to submit an application for losses incurred in a State fiscal year is June 30 of the next Federal fiscal year that begins after the end of the State fiscal year.

In § 148.316(e), "Where to submit an application," we changed the text to read: Applications must be submitted to <http://www.grants.gov>.

Funding Mechanism (§ 148.318)

We amended § 148.318, dealing with continued funding of a risk pool. The State must outline funding sources, such as assessments and State general revenues, which can cover the projected costs and are reasonably designed to ensure continued funding of losses a State incurs in connection with the operation of the qualified high risk pool after the last fiscal year for which it is applying for grant funds.

Grant Awards (§ 148.320)

We amended this section to specify that the grantee will be required to submit quarterly progress and financial reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by the States.

III. Analysis of and Responses to Public Comments and Provisions of the Final Regulations

We did not receive any public comments on the July 27, 2007 interim final rule with comment period. Therefore, this final rule implements the provisions of the interim final rule without change.

IV. Collection of Information Requirement

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

Section 148.316 Grant Application Instructions

Section 148.316(a) requires each State to compile an application package that documents that it has met the requirements for a grant. If a risk pool entity applies on behalf of a State, it must provide documentation that it has been delegated appropriate authority by the State.

The burden associated with this requirement is subject to the PRA; however, the structure of the application collection and grant

monitoring reporting requirements of the grants has not been changed from the original grants program and is currently approved under OMB control number 0938–0887 “Matching Grants to States for the Operation of High Risk Pools and Supporting Regulations at 42 CFR 148.316, 148.318, and 148.320” with a current expiration date of 01/31/2010. We are, however, revising this package to include the additional request under 148.316(a)(3) for (1) Description of Type of Consumer Benefits; (2) Description of the Eligible Population for the consumer benefits; and, (3) Projected Budget for the use of Bonus Grants. We believe the burden associated with the additional information is already captured in the currently approved OMB package (#0938–0887).

Section 148.320 Grant Awards

Section 148.320(a)(2)(iii) states that a grantee is required to submit quarterly progress and financial reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by States.

The burden associated with this requirement is the time it would take for a grantee to submit quarterly progress and financial reports. We estimate it will take one grantee 1 hour per quarter to comply with this requirement.

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attn.: Melissa Musotto, CMS–2260–IFC, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Katherine Astrich, CMS Desk Officer, CMS–2260–IFC, katherine_astrich@omb.eop.gov. Fax (202) 395–6974.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We did not prepare an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 45 CFR Part 148

Administrative practice and procedure, Health care Health insurance, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare &

Medicaid Services amends 45 CFR chapter IV as set forth below:

PART 148—REQUIREMENTS FOR THE INDIVIDUAL HEALTH INSURANCE MARKET

■ 1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 2741 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg–41 through 300gg–63, 300gg–91, and 300gg–92).

Subpart E—Grants to States for Operation of Qualified High Risk Pools

■ 2. Section 148.306 is revised to read as follows:

§ 148.306 Basis and scope.

This subpart implements section 2745 of the Public Health Service Act (PHS Act). It extends grants to States that have qualified high risk pools that meet the specific requirements described in § 148.310. It also provides specific instructions on how to apply for the grants and outlines the grant review and grant award processes.

■ 3. Section 148.308 is amended by—

■ A. Revising the definition for “bonus grants.”

■ B. Revising the definition of “qualified high risk pool.”

■ C. Revising the definition of “State.”

The revisions read as follows:

§ 148.308 Definitions.

* * * * *

Bonus grants means funds that the Secretary provides from the appropriated grant funds to be used to provide supplemental consumer benefits to enrollees or potential enrollees in qualified high risk pools.

* * * * *

Qualified high risk pool as defined in sections 2744(c)(2) and 2745(g) of the PHS Act means a risk pool that—

(1) Provides to all eligible individuals health insurance coverage (or comparable coverage) that does not impose any preexisting condition exclusion with respect to such coverage for all eligible individuals, except that it may provide for enrollment of eligible individuals through an acceptable alternative mechanism (as defined for purposes of section 2744 of the PHS Act) that includes a high risk pool as a component; and

(2) Provides for premium rates and covered benefits for such coverage consistent with standards included in the NAIC Model Health Plan for Uninsurable Individuals Act that was in effect at the time of the enactment of the Health Insurance Portability and Accountability Act of 1996 (August 21,

1996) but only if the model has been revised in State regulations to meet all of the requirements of this part and title 27 of the PHS Act.

* * * * *

State means any of the 50 States and the District of Columbia and includes the U.S. Territories of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

* * * * *

■ 4. Section 148.310 is amended by—

■ A. Republishing the introductory text to the section.

■ B. Revising paragraph (b).

■ C. Revising paragraph (d).

■ D. Revising paragraphs (f), (g), and (h).

The republication, revisions, and additions read as follows:

§ 148.310 Eligibility requirements for a grant.

A State must meet all of the following requirements to be eligible for a grant:

* * * * *

(b) The pool restricts premiums charged under the pool to no more than 200 percent of the premium for applicable standard risk rates for the State.

* * * * *

(d) The pool has in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of each fiscal year for which the State applies for Federal Funding in fiscal year (FY) 2005 through FY 2010 in connection with the operation of the pool.

* * * * *

(f) In the case of a qualified high risk pool in a State that charges premiums that exceed 150 percent of the premium for applicable standard risks, the State will use at least 50 percent of the amount of the grant provided to the State to reduce premiums for enrollees.

(g) In no case will the aggregate amount allotted and made available to the U.S. Territories for a fiscal year exceed \$1,000,000 in total.

(h) Bonus grant funding must be used for one or more of the following benefits:

(1) Low income premium subsidies;

(2) Reduction in premium trends, actual premium or other cost-sharing requirements;

(3) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment rules;

(4) Less stringent rules or additional waiver authority with respect to coverage of pre-existing conditions;

(5) Increased benefits; and

(6) The establishment of disease management programs.

■ 5. Section 148.312 is amended by—

■ A. Revising paragraph (a).

■ B. Revising paragraph (b).

■ C. Revising paragraph (d).

The revisions read as follows:

§ 148.312 Amount of grant payment.

(a) An eligible State may receive a grant to fund up to 100 percent of the losses incurred in the operation of its qualified high risk pool during the period for which it is applying or a lesser amount based on the limits of the allotment under the formula.

(b) Funds will be allocated in accordance with this paragraph to each State that meets the eligibility requirements of § 148.310 and files an application in accordance with § 148.316. The amount will be divided among the States that apply and are awarded grants according to the allotment rules that generally provide that: 40 percent will be equally divided among those States; 30 percent will be divided among States and territories based on their number of uninsured residents in the State during the specified year as compared to all States that apply; and 30 percent will be divided among States and territories based on the number of people in State high risk pools during the specified year as compared to all States that apply.

For purposes of this paragraph:

(1) The number of uninsured individuals is calculated for each eligible State by taking a 3-year average of the number of uninsured individuals in that State in the Current Population Survey (CPS) of the Census Bureau during the period for which it is applying. The 3-year average will be calculated using numbers available as of March 1 of each year.

(2) The number of individuals enrolled in health care coverage through the qualified high risk pool of the State will be determined by attestation by the State in its grant application and verified for reasonability by the Secretary through acceptable industry data sources.

* * * * *

(d) One-third of the total appropriation will be available for the bonus grants. In no case will a State for a fiscal year receive bonus grants that exceed 10 percent of the total allotted funds for bonus grants.

■ 6. Section 148.314 is revised to read as follows:

§ 148.314 Periods during which eligible States may apply for a grant.

(a) *General rule.* A State that meets the eligibility requirements in § 148.310

may apply for a grant to fund losses that were incurred during the State's FYs 2005, 2006, 2007, 2008 and 2009 in connection with the operation of its qualified high risk pool. Funding for FY 2007 through FY 2010 under the Extension Act requires subsequent enactment of appropriations authority. States will be unable to apply for grants unless and until such funding becomes available. Grants funding is on a retrospective basis and applies to the States previous fiscal year. If a State becomes eligible for a grant in the middle of its fiscal year, a State may apply for losses incurred in a partial fiscal year if a partial year audit is done. Only losses that are incurred after eligibility is established will qualify for a grant.

(b) *Maximum number of grants.* An eligible State may only be awarded a maximum of five grants, with one grant per fiscal year. A grant for a partial fiscal year counts as a full grant.

(c) *Deadline for submitting grant applications.* The deadlines for submitting grant applications are stated in § 148.316(d).

(d) *Distribution of grant funds.* States that meet all of the eligibility requirements in § 148.310 and submit timely requests in accordance with paragraph (c) of this section will receive an initial distribution of grant funds using the following methodology: Grant applications for losses will be on a retrospective basis. For example, grant applications for 2006 funds are based on the State's FY 2005 incurred losses. Grant funding was appropriated for Federal FY 2006 and is authorized to be appropriated for Federal FYs 2008 through 2010.

(e) *Grant allocations.* Grant allocations for each fiscal year will be determined by taking all grant applications during the period for which States are applying and allocating the funds in accordance with § 148.312.

(1) In no case will a State receive funds greater than 100 percent of their losses.

(2) If any excess funds remain after the initial calculation, these excess funds will be proportionately redistributed to the States whose allocations have not exceeded 100 percent of their losses.

■ 7. Section 148.316 is amended by—

■ A. Revising the introductory text to the section.

■ B. Amending paragraph (a) introductory text by revising the heading.

■ C. Revising paragraph (a)(3).

■ D. Revising paragraph (b).

■ E. Revising paragraph (c).

■ F. Revising paragraph (d).

■ G. Revising paragraph (e).

The revisions read as follows:

§ 148.316 Grant application instructions.

Funding for FY 2008, FY 2009, and FY 2010 under the Extension Act requires the subsequent enactment of appropriations authority. Funding was appropriated for Federal FY 2006. States will be unable to apply for FY 2008 through FY 2010 grants unless and until such funding becomes available.

(a) *Application for operational losses.*

* * *

* * * * *

(3) *Bonus grants for supplemental consumer benefits.* Provide detailed information about the following supplemental consumer benefits for which the entity is applying:

(i) A narrative description of one or more of the following of the supplemental consumer benefits to be provided to enrollees and/or potential enrollees in the high risk pool:

(A) Low income premium subsidies;

(B) Reduction in premium trends, actual premium or other cost-sharing requirements;

(C) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment;

(D) Less stringent rules, or additional waiver authority with respect to coverage of pre-existing conditions;

(E) Increased benefits; and

(F) The establishment of disease management programs.

(ii) A description of the population or subset population that will be eligible for the supplemental consumer benefits.

(iii) A projected budget for the use of bonus grant funds using the SF 424 A.

* * * * *

(b) *Standard form application kit—(1) Forms.* (i) The following standard forms must be completed with an original signature and enclosed as part of the application package:

SF-424 Application for Federal Assistance.

SF-424A Budget Information.

SF-424B Assurances Non-Construction Programs.

SF-LLL Disclosure of Lobbying Activities Biographical Sketch.

(ii) These forms can be accessed from the following Web site: <http://www.grants.gov>.

(2) *Other narrative.* All other narrative in the application must be submitted on 8½ x 11 inches white paper.

(c) *Application submission.*

Submission of application package is through <http://www.grants.gov>.

Submissions by facsimile (fax)

transmissions will not be accepted.

(d) *Application deadlines.* (1) The deadline for States to submit an application for losses incurred in a State fiscal year is June 30 of the next Federal fiscal year that begins after the end of the State fiscal year. Funding for FY 2008, FY 2009, and FY 2010 under the Extension Act requires the subsequent enactment of appropriations authority. Funding was appropriated for Federal FY 2006. States will be unable to apply for FY 2008 through FY 2010 grants unless and until such funding becomes available.

(2) *Deadline for States to submit an application for losses incurred in their fiscal year 2005.* States had to submit an application to CMS no later than June 30, 2006.

(3) *Deadline for States to submit an application for losses incurred in their fiscal year 2006.* States must submit an application to CMS by no later than June 30, 2007.

(4) *Deadline for States to submit an application for losses incurred in their fiscal year 2007.* States must submit an application to CMS by no later than June 30, 2008.

(5) *Deadline for States to submit an application for losses incurred in their fiscal year 2008.* States must submit an application to CMS by no later than June 30, 2009.

(6) *Deadline for States to submit an application for losses incurred in their fiscal year 2009.* States must submit an application to CMS by no later than June 30, 2010.

(e) *Where to submit an application.*

Applications must be submitted to <http://www.grants.gov>. Submissions by facsimile (fax) transmissions will not be accepted.

■ 8. Section 148.318 is amended by revising paragraph (d)(2) to read as follows:

§ 148.318 Grant application review.

* * * * *

(d) * * *

(2) *Funding mechanism.* The State has outlined funding sources, such as assessments and State general revenues, which can cover the projected costs and are reasonably designed to ensure continued funding of losses a State incurs in connection with the operation of the qualified high risk pool after each fiscal year for which it is applying for grant funds.

■ 9. Section 148.320 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 148.320 Grant awards.

(a) * * *

(2) * * *

(iii) The grantee will be required to submit quarterly progress and financial

reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by States.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 17, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: January 17, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8-9066 Filed 4-24-08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[Docket No. 080414564-8565-01]

RIN 0648-AW71

Whaling Provisions; Aboriginal Subsistence Whaling Quotas

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

ACTION: Notification.

SUMMARY: NMFS announces the aboriginal subsistence whaling quota it has assigned to the Alaska Eskimo Whaling Commission (AEWC) for bowhead whales, and other limitations deriving from regulations adopted at the 59th Annual Meeting of the International Whaling Commission (IWC). For 2008, the quota is 75 bowhead whales struck. This quota and other limitations govern the harvest of bowhead whales by members of the AEWC.

DATES: Effective April 25, 2008.

ADDRESSES: Office of International Affairs, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Cheri McCarty, (301) 713-9090.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*). Regulations that implement the Act, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other

limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 59th Annual Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of two Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5-year block quota of 280 bowhead whales landed. For each of the years 2008 through 2012, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 2003 through 2007 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any one year. At the end of the 2007 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2008 is 82 (67 + 15).

This arrangement ensures that the total quota of bowhead whales landed and struck in 2008 will not exceed the quotas set by the IWC. Under an arrangement between the United States and the Russian Federation, the Russian natives may use no more than seven strikes, and the Alaska Eskimos may use no more than 75 strikes.

Through its cooperative agreement with the AEWC, NOAA has assigned 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 11 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

Other Limitations

The IWC regulations, as well as the NOAA regulation at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA regulations (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant

cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: April 21, 2008.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E8-9111 Filed 4-24-08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319075-1217-02]

RIN 0648-XF92

Fisheries of the Northeastern United States; Tilefish Fishery; Quota Harvested for Part-time Category

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

ACTION: Temporary rule; tilefish Part-time permit category closure.

SUMMARY: NMFS announces that the percentage of the tilefish annual total allowable landings (TAL) available to the tilefish Part-time permit category for the 2008 fishing year has been harvested. Therefore, commercial vessels fishing under the Part-time tilefish category may not harvest tilefish from within the Golden Tilefish Management Unit for the remainder of the 2008 fishing year (through October 31, 2008) as of April 25, 2008. Regulations governing the tilefish fishery require publication of this notification to advise the public of this closure.

DATES: Effective 0001 hrs local time, April 25, 2008, through 2400 hrs local time, October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Timothy A. Cardiasmenos, Fishery Policy Analyst, at (978) 281-9204.

SUPPLEMENTARY INFORMATION: Regulations governing the tilefish